

INSTITUTION OF PROCEEDINGS

Prior to instituting proceedings, a police officer should be satisfied on reasonable grounds that:

[i] an offence has been committed.

The term '*offence*' is defined in section 16 of the *Interpretation and General Provisions Act* (Ch. 85) as meaning:

'any crime, felony, misdemeanour or contravention or breach of, or failure to comply with, any written law, for which a penalty is provided'.

Therefore, sections 50 to 59 of the *Traffic Regulations* (Ch. 131) do *not* constitute offences because there is *no* penalty provided.

[ii] each and every element of intended charge/s can be proven.

[iii] the person against whom prosecution is proposed has committed the offence/s.

Section 10(2)(a) of the *Constitution* states:

'Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty'.

[iv] consent to prosecute has been obtained from the Director of Public Prosecutions, if required.

[v] there is no statutory limitation on such proceedings.

Section 206 of the *Criminal Procedure Code* (Ch. 7) states:

'Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months or a fine of one hundred dollars or both such imprisonment and fine shall be triable by a Magistrate's Court, *unless the charge or complaint relating to it is laid within six months from the time when the matter of such charge or complaint arose.*' (emphasis added)

The '*laying of the charge or complaint*' refers to the time when it was laid before the Court.

The 'time when the matter of such charge or complaint arose' refers to the date on which the offence is alleged to have been committed.

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Care should be taken to select an offence that accurately reflects the nature and extent of the criminal behavior under investigation, thereby providing the court with the option of imposing a penalty commensurate with the criminal conduct. It is important to ensure that defendants are charged with all of the offences which they have committed and not just a selection of such charges. When the circumstances of a particular case indicate that two or more alternative charges are supportable, the offence carrying the greater penalty should be preferred, subject to any express directions of the Director of Public Prosecutions, see section 74 of the *Criminal Procedure Code* (Ch. 7).

When investigating any offence the investigating officer should ensure that his/her investigation complies with the law, otherwise admissible evidence will be ruled by the courts to be inadmissible. It is therefore necessary to ensure that police only exercise their powers to detain, search, seize, etc in accordance with the applicable law relating to the offence under investigation.

If any officer is in any doubt regarding the institution of proceedings against an offender, he/she should seek advice.

When officers are making a decision to institute proceedings they are to ensure that their decision is not influenced by matters such as:

- [i] the race, religion, gender, ethnicity or political affiliations of the offender;
- [ii] any personal feelings or bias towards the offender;
- [iii] a possible political advantage or disadvantage to the Government or any interest group;
- or
- [iv] a fear of career or personal disadvantage or any career advantage on the part of the person making the prosecution decision.

Upon deciding to institute proceedings a Docket is to be completed in accordance with the policy as outlined in the *Case Management Manual*.

ONUS OF PROOF

[1.0] **General Principles**

The *prosecution* bears:

- [i] the onus of proving each and every element of a charge to the standard of proof which is '*beyond reasonable doubt*';

 and
- [ii] the onus of negating any defence raised to the standard of proof which is '*beyond reasonable doubt*', irrespective whether the defence is raised:
 - [a] '*on the balance of probabilities*';

 or
 - [b] '*fairly*'.

The only *onus* which the defendant bears is in respect to:

- [i] the defence of '*Insanity*' as outlined in the *Penal Code* (Ch. 26) and the *Criminal Procedure Code* (Ch. 7) which is to the '*standard of proof*' of '*on the balance of probabilities*';

 and
- [ii] '*negative averments*' as referred to in section 202 of the *Criminal Procedure Code* (Ch. 7) to the '*standard of proof*' of '*on the balance of probabilities*', but only after the prosecution having proven that the specified act/s occurred '*beyond reasonable doubt*'.

[2.0] **Negative Averments**

Section 10(11) of the *Constitution* states (in part):

'Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

- (a) subsection (2)(a) of this section to the extent that the law in question *imposes upon any person charged with a criminal offence the burden of proving particular facts.*' (emphasis added)

The following sections of the *Criminal Procedure Code* (Ch. 7) also refer to '*Negative Averments*':

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Section 120 states (in part):

'The following provisions shall apply to all charges and information and, notwithstanding any rule of law or practice, a charge or information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code –

- (b)(ii) it shall *not* be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or proviso or qualification to, the operation of the enactment creating the offence.' (emphasis added)

Section 202 states:

'Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the law creating the offence, and whether or not specified or negated in the charge or complaint, may be proved by the defendant, *but no proof in relation thereto shall be required on the part of the complainant.*' (emphasis added)

Therefore, when the prosecution avers in a charge that a defendant did not have an 'exception', 'exemption', 'proviso', 'excuse' or 'qualification' in respect of an offence, the onus is on the defendant on the '*balance of probabilities*' to prove otherwise. However, before such an onus is on the defendant the prosecution *must* prove '*beyond reasonable doubt*' the other elements of the preferred charge.

There is *no* onus on the prosecution to prove that the defendant did not have an 'exception', 'exemption', 'proviso', 'excuse' or 'qualification' in relation to such an offence.

[3.0] Elementising Of Charges

It is important that arresting or investigating police officers:

- [i] select the appropriate charge;
- [ii] elementise the charge
- and
- [iii] prove each element of the charge.

For example, if the defendant Edmon Sukena is charged:

'That Edmon Sukena of Kwailbala Village, Malaita Province on 7th January 2002 did drive a motor vehicle to wit a Mitsubishi Station Sedan Reg. No. A9612 on a road namely Naha Kola Street, Naha not being a holder of a valid driving licence or a provincial license endorsed in respect of that class of vehicle',

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the '*elements*' are:

[i] **Defendant**

The Prosecution *must* prove '*beyond reasonable doubt*' that Edmon Sukena was the driver of the motor vehicle;

[ii] **Date**

The Prosecution *must* prove '*beyond reasonable doubt*' that the offence occurred on 7th January 2002;

[iii] **Did Drive**

The Prosecution *must* prove '*beyond reasonable doubt*' that Edmon Sukena was the driver of the motor vehicle;

[iv] **Motor Vehicle**

The Prosecution *must* prove '*beyond reasonable doubt*' that the motor vehicle driven by the defendant was a Mitsubishi Station Sedan Reg. No. A9612;

[v] **Road**

The Prosecution *must* prove '*beyond reasonable doubt*' that the motor vehicle was driven on Naha Kola Street, Naha;

and

[vi] **Not Being A Holder Of A Valid Driving License Or A Provincial License Endorsed In Respect Of That Class Of Vehicle**

The defendant *must* prove '*beyond reasonable doubt*' that he/she was the holder of a valid driving licence or a provincial license for that motor vehicle.

This is an example of a '*negative averment*'.

WORDING OF CHARGES GENERALLY

[1.0] General Principles

Section 117 of the *Criminal Procedure Code* (Ch. 7) states:

Every charge or information shall contain, and shall be sufficient if it contains, a *statement of the specific offence or offences* with which the accused person is charged, together with such *particulars* as may be necessary for giving reasonable information as to the nature of the offence charged.’ (emphasis added)

In *Paroke & Kuper v R* (Unrep. Criminal Case No. 21 of 1992) Muria ACJ commented at page 2:

‘The principle of *fair hearing* embodies the requirement that an accused person *must know with certainty* what has been alleged against him.’ (emphasis added)

In compliance with sections 117 and 120 of the *Criminal Procedure Code* (Ch. 7), each charge *must* contain:

- [i] a ‘**statement of the offence**’ which *shall*:
 - [a] describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms;

and
 - [b] include a reference to:
 - 1. the section of the statute creating the offence. For example, regulation 46 of the *Traffic Regulations* (Ch. 131);

and
 - 2. the section which provides the punishment. For example, regulation 49 of the *Traffic Regulations* (Ch. 131).

However, it is not necessary to:

- [a] state on which day of the week an offence was committed;
- [b] state the title of any person such as Mr. or Mrs;

or
- [c] state the exact location where an offence was committed.

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In *R v Jacob Waipage* (Unrep. Criminal Case No. 46 of 1996) Lungole – Awich J stated:

‘If it is born in mind that the purpose of a charge is to state the offence so that an accused understands clearly the offence he faces, and if it is born in mind that a charge is the statement of offence together with the particulars of offence, *then both the section that defines the offence and the section that states the punishment must be stated in the statement of the offence.* That way the full extent of what accused faces is laid before the court, and accused is enabled to understand whether his actions or omissions fit in the definition of the offence.’ (emphasis added)

and

[ii] ‘**particulars**’ of such offence which *shall* be set out in ordinary language in which the use of technical terms should be avoided and which *shall* contain:

[a] the forename and surname of the defendant;

[b] the location of the offence;

[c] the date of the offence;

and

[d] *sufficient* details so that the defendant understands the charge. It is for that reason that such ‘*particulars*’ *must* be set out in ordinary language and technical terms are to be avoided, if possible.

Section 120 of the *Criminal Procedure Code* (Ch. 7) states (in part):

‘The following provisions *shall apply* to all charges and information and, notwithstanding any rule of law or practice, a charge or information *shall*, subject to the provisions of this Code, *not* be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code –

(a)(i) a count of a charge or information *shall commence with a statement of the offence*;

(ii) the statement of offence *shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms*, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;

(iii) *after the statement of the offence, particulars of such offence shall be set out in ordinary language*, in which the use of technical terms shall not be necessary;

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Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph *shall* require any more particulars to be given than those required;

- (iv) where a charge or information contains *more than one count* the counts *shall* be numbered consecutively;

[Therefore, if there is more than one charge or count, each charge or count is to be numbered consecutively.]

- (b)(ii) it shall *not* be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or proviso or qualification to, the operation of the enactment creating the offence;

[Refer also to the section which examines the law relating to '*Negative Averments*' commencing on page 3.]

- (c)(i) *the description of property in a charge or information shall* be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;

- (ii) *where the property is vested in more than one person*, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name and others, and if the person owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners", or "Club" or other such name, it *shall* be sufficient to use the collective name without naming any individual;

[Therefore, if the property in question is owned by more than one person it is sufficient to specify 'the name of one of the owners and others'. For example, '... the property of Edmon Peters and others'.

If the property in question is owned by a '*body of persons*' with a collective name it is sufficient to specify the name of that '*body of persons*'.]

- (iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of *Her Majesty the Queen*;

[Therefore, for example, the ownership of the property belonging to the RSIP is vested in 'Her Majesty the Queen'.]

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- (d) *the description or designation in a charge or information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown";*
- (e) *where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof;*
- (f) *subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.'* (emphasis added)

[2.0] Date Of The Offence

The use of the words 'Between ... and ...' signifies a continuing offence between those specified dates, see *Ex parte Bignall* (1915) 32 NSWVN 91. An example of such an offence is 'Growing A Dangerous Drug', as provided for in section 8(a) of the *Dangerous Drugs Act* (Ch. 98).

Therefore, to charge a defendant with 'Between the second day of March 1994 and the sixth day of March 1994 ...' signifies that the offence was committed on the third, fourth and fifth days of March 1994. It should be noted that the offence is alleged to have *not* occurred on either of the dates specified in the charge.

If the offence is *not* a continuing offence in nature and it is *unknown* on which date the offence was committed, but the dates on either side of the offence can be proven, then the following wording should be used:

'That on a date unknown between ... and ...'.

An example of such an offence would be a '*break and enter*' offence whereby it is unknown on which day the property was stolen, but the complainant can give evidence to substantiate when he/she:

- [i] left the '*dwelling – house*';
- and

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[ii] returned.

See also: section 201(2) of the *Criminal Procedure Code* (Ch. 7).

[3.0] Joinder Of Charges

Section 120(a) of the *Criminal Procedure Code* (Ch. 7) states (in part):

- (iv) Where a charge or information contains *more than one count* the counts *shall* be numbered consecutively.’ (emphasis added)

Section 118 of that *Code* states:

- (1) Any offences, whether *felonies or misdemeanours*, may be charged together in the same charge or information if the offences charged are *founded on the same facts or form, or are part of, a series of offences of the same or a similar character*.
- (2) *Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.*
- (3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused *may* be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information the court may order a separate trial of any count or counts of such charge or information.’ (emphasis added)

When ‘*joining*’ separate charges relating to the same defendant, the words ‘*and further*’ should be typed below the wording of the relevant charge/s.

Section 119 of the *Criminal Procedure Code* (Ch. 7) states:

‘The following persons may be joined in one charge or information and *may* be tried together, namely –

- (a) person accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of different offences committed in the course of the same transaction;

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- (d) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character.'

When joining separate charges relating to different defendants, the words '*charged conjointly with*' should be typed below the wording of the relevant charge/s.

[4.0] Alternative Charges

Section 120(b)(i) of the *Criminal Procedure Code* (Ch. 7) permits the '*joinder*' of '*alternative charges*'. That subsection states:

'[W]here an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or *states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence.*' (emphasis added)

When joining alternative charges, it should be indicated on the top of the '*Notice of Offence Charged Form*'.

None of the charges specified in this Manual may be laid in the '*alternative*'.

[5.0] Duplicity

The rule against '*duplicity*' relates to the charging of a defendant with committing *more than one offence in a single charge*.

For example, it is bad for '*duplicity*' to allege the following two separate offences, ie., 'break and enter with intent' under section 299(a) of the *Penal Code* (Ch. 26) and 'break and enter with intent' under the section 300(a) of that *Code*, in a single charge.

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[1.0] Power To Regulate Traffic

Section 66 of the *Traffic Act* (Ch. 131) states:

'Without prejudice to any powers or duties of the police under this Act or any other Act, it shall be lawful for any police officer –

- (a) to regulate all traffic and to keep order and prevent obstruction in all roads, parking places and other places of public resort;
- (b) to divert traffic temporarily or to restrict or close and deny public access to any road, parking place or other place of public resort, where any emergency or any assembly or other event appear to render advisable such a course.'

Section 53(1) of the *Traffic Act* (Ch. 131) states:

'Where a police officer in uniform is for the time being engaged in the regulation of traffic on a road, or where a traffic sign has been lawfully placed on or near a road, a person driving or propelling a vehicle who –

- (a) neglects or refuses to stop the *vehicle* or to make it proceed in, or keep to, a particular line of traffic when directed to do so by the police officer in the execution of his duty;
- (b) [...]

shall be guilty of an offence [...].' (emphasis added)

The wording of the charge for this offence is as follows:

'did whilst [driving **or** propelling] a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] did [neglect **or** refuse] to [stop the said vehicle **or** make it (proceed in **or** keep to) a particular line of traffic] when directed to do so by a police officer [specify the rank and name of the officer] who was in uniform engaged in the regulation of traffic and in the execution of his/her duty.'

Section 54 of the *Traffic Act* (Ch. 131) states:

'Where a police officer in uniform is for the time being engaged in the regulation of vehicular traffic on a road, a *person on foot* who proceeds across or along the carriageway in contravention of a direction to stop given by the police officer, in the execution of his duty, either to persons on foot or to persons on foot and other traffic, shall be guilty of an offence [...].' (emphasis added)

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The wording of that charge is as follows:

‘on foot did proceed [across **or** along] the carriageway of a road namely [specify the name of the road] in contravention of a direction to stop given by a police officer namely [specify the rank and name of the officer] in uniform engaged in the regulation of vehicular traffic in the execution of (his/her) duty.’

[2.0] Power To Arrest Without Warrant

Section 18 of the *Criminal Procedure Code* (Ch. 7) states (in part):

‘Any police officer may, without an order from a Magistrate and *without a warrant*, arrest –

- (a) any person whom he suspects upon reasonable grounds of having committed a *cognisable offence*;
- (b) any person who commits any offence in his presence.’ (emphasis added)

As defined in section 2 of the *Criminal Procedure Code* (Ch. 7), a ‘*Cognisable Offence*’ ‘means any felony and any other offence for which a police officer may under any law for the time being in force arrest without warrant’. (emphasis added)

As defined in section 4 of the *Penal Code* (Ch. 26), a ‘*Felony*’ ‘means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with imprisonment for three years or more’. (emphasis added)

The only *cognisable offence* under the *Traffic Act* (Ch. 131) is ‘*Causing Death by Reckless or Dangerous Driving*’, as provided for by section 38.

A police officer may arrest without warrant a person whom he/she suspects upon reasonable grounds of having committed any of the following offences under the *Traffic Act* (Ch. 131):

- ‘*Driving Or Being In Charge, When Under The Influence Of Drinks Or Drugs*’, section 43. (See page **87**);
- ‘*Cycling When Under The Influence Of Drink Or Drugs*’, section 51. (See page **96**);
- ‘*Throwing Objects At Or Impeding Progress Of Vehicles On Roads*’, section 58. (See page **149**);
- ‘*Taking Vehicles Without Authority*’, section 59. (See page **82**);

and

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- ‘*Tamper With Motor Vehicles*’, section 60. (See page **86**).

[3.0] Inspection/Examination/Test Of Vehicles

Section 64 of the *Traffic Act* (Ch. 131) states (in part):

‘Where an accident arises out of the presence of a motor vehicle on a road, any police officer in uniform or upon production of his authority if so required, may –

- (a) *inspect* such vehicle and for that purpose may enter at any reasonable time any premises where the vehicle is;

and

- (b) order any person in charge of such vehicle not to move it for such reasonable time as he may require for the purpose of investigating the cause of the accident and preparing any plan or report,

and any person who obstructs any police officer in the due exercise of his powers or performance of his duties under this section, or fails to comply with any order under this section shall be guilty of an offence [...].’ (emphasis added)

The wording of charge for this offence is as follows:

‘did [obstruct a police officer namely (specify the rank and name of the officer) in the (due exercise of [his/her] powers **or** performance of [his/her] duties) **or** fail to comply with an order issued by a police officer namely (specify the rank and name of the officer)] under section 64 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the defendant did (obstruct **or** fail to comply) in accordance with that section].’

As regards ‘*Traffic Accidents*’, refer to page **142**.

Section 71 of the *Traffic Act* (Ch. 131) states (in part):

- ‘(1) It shall be lawful for any police officer in uniform to stop any vehicle, and for any police officer, [...] –

- (a) to enter any vehicle;

- (b) to drive any vehicle or cause any vehicle to be driven;

- (c) *upon reasonable suspicion of any offence under this Act*, to order and require the owner of any vehicle to bring the vehicle to him,

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for the purpose of carrying out *any examination and test* of any vehicle with a view to ascertaining whether the provisions of this Act are being complied with or with a view to ascertaining whether any vehicle is being used in contravention of this Act.

- (2) A [...] police officer of or above the rank of Inspector, may require the holder of any vehicle license or the owner or any person in possession of any vehicle which he has reasonable cause to believe is used on a road, to produce the vehicle at such reasonable time and place as he shall specify for the purpose of carrying out any examination or test as aforesaid.
- (3) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence [...].’ (emphasis added)

The wording of the charge for this offence is as follows:

‘did fail to comply with an [instruction **or** order] as issued by [a police officer namely (specify the rank and name of the police officer **or** an inspector appointed under section 4(3) of the *Traffic Act* (Ch. 131) namely (specify the name of the inspector))] on [specify the date] under section 71 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the defendant did fail to comply with the (instruction **or** order) issued in accordance with that section].’

[4.0] Removal And Detention Of Vehicles

Section 72 of the *Traffic Act* (Ch. 131) states:

- (1) *Where any vehicle is found in use on a road in contravention of the provisions of this Act, or where any vehicle has been left on any road or public place in such circumstances as to make it appear that such vehicle has been abandoned or should be removed to a place of safety, or where any vehicle has been left on a road in a position which causes or is likely to cause danger to other road users and the owner or driver cannot readily be found, it shall be lawful for any police officer [...] to take the vehicle or cause it to be taken to a police station or other place of safety by such method, route and under such conditions as he may consider necessary, having regard to all the circumstances of the case.*
- (2) Where under subsection (1) it is considered necessary to have a vehicle towed, transported, driven, or otherwise removed, or where it is considered necessary to carry out emergency repairs or to adjust or off-load any part of the load of such vehicle, any expense incurred thereby shall be payable by the owner of the vehicle, and no such vehicle shall be released from the police station or other place of safety until either –

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- (a) such expenses have been paid to the person to whom they are due; or
- (b) such person certifies that he is willing to allow the vehicle to be removed before he receives such expenses due to him.
- (3) A police officer [...] who orders the removal of a vehicle under this section shall not be held liable for any damage to or loss of any item from such vehicle during its removal to or detention at a police station or other place of safety.
- (4) Any police officer [...], if he is of the opinion that any vehicle is being used in contravention of section 44 [*Condition of Vehicle*] or section 45 [*Limitation of Loads*] or in contravention of any regulations relating to construction, use and equipment of vehicles, may by order in writing prohibit the use of such vehicle under such conditions and for such purposes as he may consider necessary for the safety of the public or to ensure that such vehicle does comply with the aforementioned provisions; and where any such order specifies any repairs or defects, it shall remain in force until the repairs or defects specified therein have been satisfactorily completed and remedied and the vehicle has been certified as complying with the aforesaid conditions with respect to construction, use and equipment.
- (5) Any person who permits the use of, or drives, any vehicle in respect of which any prohibition or restriction is in force other than in conformity with any conditions or for such purpose as may have been specified shall be guilty of an offence [...].
- (6) Where any vehicle is required to be examined and tested for the purpose of being certified as complying with the provisions of this Act, the fee, if any, shall be paid by the owner of the vehicle.
- (7) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence [...].’ (emphasis added)

The wording of the charge for the offence as provided for by section 72(5) is as follows:

‘did [permit the use of **or** drive] a vehicle to wit a [specify the vehicle] in respect of which a [prohibition **or** restriction] was in force other than in conformity with [the condition/s **or** purpose] as specified in the [prohibition **or** restriction] to wit [specify the (condition/s **or** purpose)].’

The wording of the charge for the offence as provided for by section 72(7) is as follows:

‘did fail to comply with an [instruction **or** order] given under section 72 of the *Traffic Act* (Ch. 131) given by [specify the name of this person].’

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Section 73 of the *Traffic Act* (Ch. 131) states:

‘It shall be lawful for any police officer to detain at a police station or other place of safety any vehicle which has been removed from a road or other or other public place under section 72 until such inquiries have been made by the police as they may think necessary in the circumstances of the case.’

As regards ‘*Defective Vehicles*’, refer to page **123**.

[5.0] *Traffic (Motor Cyclists’ Headgear) Regulations (Ch. 131)*

Regulation 4(1) of the *Traffic (Motor Cyclists’ Headgear) Regulation* (Ch. 131) states:

‘It shall be lawful for any police officer in uniform or on production of his authority if required to require any person driving or riding a motor cycle in breach of the provisions of these Regulations to stop, dismount and refrain from driving or riding upon that or any other motor cycle until such breach is remedied.’

[6.0] Power To Search

[6.1] Introduction

A search is an examination of a person’s house, building, place or person with the view to the discovery of evidence of the commission of an offence.

No person shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence.¹

In *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996) the Court of Appeal stated at pages 1 – 2:

‘Section 9 of the Constitution provides that no person shall be subjected to search of his person or property unless a statute, dealing inter alia with breaches of the law as detecting criminal offences, makes specific provision for such a search.’

The *Criminal Procedure Code* (Ch. 7) is one statute that provides the power to police officers to conduct searches and it is that statute which will be examined in this learning resource. There are a number of other statutes which also provide the power of police officers to conduct searches including:

- the *Dangerous Drugs Act* (Ch. 98);

¹ *International Human Rights Instruments* titled, ‘*Universal Declaration of Human Rights*’, Article 12; and ‘*International Covenant on Civil and Political Rights*’, Article 17(1). See also section 3 of the *Constitution*.

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- the *Firearms and Ammunitions Act* (Ch. 80);
- and
- the *Liquor Act* (Ch. 144).

When conducting a search it is important to be as thorough as possible. Every possible place in which evidence may be hidden should be opened and searched.

All evidence located during the course of a search is to be dealt with as an '*exhibit*'.

It is important that notes are made during the course of a search specifying where particular exhibits were located. As regards the search of a house it is also beneficial for court to have a diagram prepared.

Searches should only be conducted if there is a reasonable basis for believing that there is evidence which may be obtained."

[6.2] Safety At Work

Whilst '[i]t is the duty of every employer to ensure, so far as is reasonably practicable, the health and safety at work of all his employees'², considering the variety of police work it is impossible for the RSIP to foresee every possibility of an officer hurting themselves whilst conducting searches.

However, in compliance with section 6 of the *Safety At Work Act* (Ch. 74),

'[i]t is the duty of every employee while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work'.

Therefore, whenever a search is being conducted officers *must* be mindful of their own safety and the safety of the public.

It is important that prior to and when conducting a search that consideration be given to the possibility of any person being hurt.

For example, an officer should never put his/her hand in somewhere where they can *not* see inside.

It is '*best practice*' to ask the person to be searched or the owner of the property to be searched if there is anything which may cause you an injury whilst conducting the search and if you suspect that there may be a *risk* in conducting the search proceed with extreme caution.

² As provided for by section 4(1) of the *Safety At Work Act* (Ch. 74)

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[6.3] Constitution

Section 9 of the *Constitution* states (in part):

- '(1) *Except with his own consent*, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that *the law in question makes provision –*

[...]
- (d) for the purpose of authorising the entry upon any premises in pursuance of an order of a court for the purpose of enforcing the judgment or order of a court in any proceedings; or
- (e) for the purpose of authorising the entry upon any premises for the purpose of preventing or detecting criminal offences,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.' (emphasis added)

If a search is being conducted with the consent of the occupier such consent should be obtained in writing.

Such consent may be revoked at any time.

[6.4] Power To Enter Generally

The occupier of any dwelling – house gives an implied license to any member of the public, including police officers, coming on his/her lawful business to come through the gate to the yard, provided it is not locked, walk up the steps, and knock on the front door of the house. However, when that license is revoked by the licensee, ie., the occupier of the house, a reasonable time *must* be give to leave the yard.³

In *R v Thornley* (1981) 72 CrAppR 302 Dunn LJ, delivering the judgment of the Court, held at page 306:

'The officers were invited into the house by a co – occupier for the purpose of investigating her complaint. They were entitled to remain on the premises for a reasonable period of time in order to carry out that investigation to their satisfaction, notwithstanding that they had been told to get out by her husband.'

³ *Robson and Robson v Hallett* (1967) 51 CrAppR 307 and *Lambert v Roberts* (1981) 72 CrAppR 223.

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See also section 30 of the *Police Act* (Ch. 110) which outlines the power of police officers to enter, and if necessary, to break into any building in case of fires, floodwater or other hazards.

Police officers may only enter and remain on property if they have the authority to do so.

[6.5] Power To Search Generally

Section 84(3) of the *Penal Code* (Ch. 26) states:

‘Any police officer who has reason to believe that a weapon is being concealed or carried on any person or vehicle in a restricted area or place may, without warrant or other written authority, search and detain any such person or vehicle and take possession of such weapon.’

Section 14 of the *Criminal Procedure Code* (Ch. 7) states:

‘(1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person, and place in safe custody all articles other than necessary wearing apparel found upon him:

Provided that whenever the person arrested can be legally admitted to bail and bail is furnished, such person shall *not* be searched *unless* there are reasonable grounds for believing that he has about his person any –

- (a) ‘*stolen articles*’; or
 - (b) ‘*instruments of violence*’; or
 - (c) ‘*tools connected with the kind of offence which he is alleged to have committed*’; or
 - (d) ‘*other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed*’.
- (2) The right to search an arrested person does *not* include the right to examine his private person.
- (3) Where any property has been taken from a person under this section, and the person is not charged before any court but is released on the ground that there is no sufficient reason to believe that he has committed any offence, any property so taken from him shall be restored to him.’ (emphasis added)

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Section 15 of the *Criminal Procedure Code* (Ch. 7) states:

- (1) Any police officer who has reason to suspect that any article stolen or unlawfully obtained, or any article in respect of which a criminal offence or an offence against the customs laws has been, is being, or is about to be, committed, is being conveyed, whether on any person or in any vehicle, package or otherwise, or is concealed or carried on any person in a public place, or is concealed or contained in any vehicle or package in a public place, for the purpose of being conveyed, may, without warrant or other written authority, detain and search any such person, vehicle or package, and may take possession of and detain any such article which he may reasonably suspect to have been stolen or unlawfully obtained or in respect of which he may reasonably suspect that a criminal offence or an offence against the customs laws has been, is being, or is about to be committed, together with the package, if any, containing it, and may also detain the person conveying, concealing or carrying such article:

Provided that this subsection shall not extend to the case of postal matter in transit by post except where such postal matter has been, or is suspected of having been, dishonestly appropriated during such transit.

- (2) Any police officer of or about the rank of sergeant may, if he has reason to suspect that there is on board any vessel any property stolen or unlawfully obtained, enter without warrant, and with or without assistants, board such vessel, and may remain on board for such reasonable time as he may deem expedient, and may search with or without assistants any or every part of such vessel, and after demand and refusal of keys, may break open any receptacle, and upon discovery of any property which he may reasonably suspect to have been stolen or unlawfully obtained may take possession of and detain such property and may also detain the person whose possession the same is found. Such police officer may pursue and detain any person who is in the act of conveying any such property away from any such vessel, or after such person has landed with the property so conveyed away or found in his possession.
- (3) Any person detained under this section shall be dealt with under the provisions of section 23 [Detention of persons arrested with warrant].⁴

‘Whenever it is necessary to cause a woman to be searched, the search *shall* be made by another woman with strict regard to decency.’⁴

⁴ *Criminal Procedure Code* (Ch. 7), section 16.

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'Notwithstanding the provisions of section 14 the officer or other person making any arrest may take from the person arrested any instruments of violence which he has about his person, and shall deliver all articles so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.'⁵

[6.6] Search Warrants

[6.6.1] Authority To Issue

Section 11 of the *Magistrates' Courts Act* states (in part):

'Subject to the provisions of this and of any other Act, every justice of the peace shall, subject to any exceptions which may be contained in his appointment, within the area in and for which he holds such office, have –

- (a) all the powers, rights and duties of a Magistrate under this or any other Act to –
 - (i) [..];
 - (ii) *issue search warrants;*' (emphasis added)

Section 105 of the *Criminal Procedure Code* (Ch. 7) provides:

- that every search warrant *shall* be under the hand of the Magistrate or Justice of the Peace who issued it;
- that search warrants are normally directed generally to all police officers;
- and
- that every search warrant *shall* remain in force *until it is executed or* until it is cancelled by the Magistrate or Justice of the Peace who issued it.

⁵ *Criminal Procedure Code* (Ch. 7), section 17.

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[6.6.2] Information To Ground Search Warrant

Introduction

Section 101 of the *Criminal Procedure Code* (Ch. 7) states:

'Where it is proved on oath to a Magistrate or a justice of the peace that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence in any building, ship, vehicle, box, receptacle or place, the Magistrate or justice of the peace may by warrant (called a search warrant) authorize a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, or any other thing there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.' (emphasis added)

The police officer making the application for the issuance of a 'search warrant' must prove *on oath* to the satisfaction of the issuing Magistrate/Justice of the Peace that based on a *reasonable suspicion* there is *reasonable cause* to suspect that as specified in 'Information To Ground Search Warrant' the *property* is at the *location* and that it will constitute evidence which is necessary in the investigation of an *offence known to law*.

To establish *reasonable suspicion* it is *not* necessary to possess evidence that amounts to a *prima facie* case.⁶

An 'Information To Ground Search Warrant' must be:

- sworn *on oath* before the issuing Magistrate/Justice of the Peace;
- and
- signed by the issuing Magistrate/Justice of the Peace,

otherwise the Search Warrant will be fundamentally defective.⁷

⁶ *Smith* [2001] 2 CrAppR 1.

⁷ *Solomons Mutual Insurance Limited v Controller of Insurance and Director of Public Prosecutions* (Unreported Civil Case No. 114 of 1999; 31 July 2003; Palmer J; page 7.

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Although an '*Information to Ground Search Warrant*':

- will often be prepared at an early stage of the investigation;
- may need to be completed in haste;
- and
- *must* be completed in English,

it *must* comply with the requirements of the law if it is to be valid.⁸

Full And Accurate Details

The police officer making the application for the issuance of a '*search warrant*' *must* provide full and accurate details of inquiries conducted and the '*information/intelligence*' received in the '*Information To Ground Search Warrant*'.⁹

There should be *no rumours, assumptions or conclusions*, just facts.

The '*information/intelligence*' *must* be capable of satisfying the issuing Magistrate/Justice of the Peace that there is the need to issue the '*search warrant*'.

In order to satisfy the issuing Magistrate/Justice of the Peace the following *must* be included:

- details of the *offence 'known to law'* which has been committed;
- details of the *property* sought;
- why is reasonably suspected that the property sought is necessary in the investigation of an offence known to law;
- the reasons why it is reasonably suspected that the property sought is at the *location* as specified;
- the names of the occupiers at the location, if known;
- and
- the reasons why it is reasonably suspected that the *persons* identified are involved in the commission of the offence '*known to law*'.

⁸ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal).

⁹ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal).

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It should *not* be forgotten that it is *not* the investigating officer's opinion that matters. What is crucial is the issuing Magistrate's/Justice of the Peace's satisfaction, based on facts verified on oath by a sworn '*Information To Ground Search Warrant*'.¹⁰

Provided sufficient '*information*' is outlined in the '*Information To Ground Search Warrant*' to the satisfaction of the issuing Magistrate/Justice of the Peace additional '*information*' on oath, either orally or in the form of an affidavit, will *not* necessarily be required.¹¹

Offence

'Section 101 requires a Magistrate to be satisfied on oath that either an offence had been committed or that according to reasonable suspicion an offence had been committed. [T]he Information grounding a search warrant should disclose sufficient material which would entitle a Magistrate to have at least a reasonable suspicion that an offence had been committed and that it was necessary for a search warrant to be issued to enable investigators pursue the matter further.

[...]

Regrettably no mention was made of the offence or alleged offence for which the investigation was being conducted.'¹²

It is *not* necessary that the statement of the offence suspected to have been committed be as precise as would be required by a court in the course of a trial.¹³

However, the offence should be specified in conformity with a wording of a charge and with as much detail as is known at that stage of the investigation.

Such details which should be included are:

- the date of the alleged offence;
- the location of the alleged offence;
- and
- a brief description of the alleged offence.

¹⁰ *El – Zarw v Nickola; Ex parte El – Zarw* [1992] 1 QdR 145.

¹¹ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal).

¹² *Solomons Mutual Insurance Limited v Controller of Insurance and Director of Public Prosecutions* (Unreported Civil Case No. 114 of 1999; 31 July 2003; Palmer J; page 6.

¹³ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal).

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The alleged offence *must* be an offence '*known to law*', as specified in a statute, such as the *Penal Code* (Ch. 26).

Details such as 'obtained by fraudulent means from the Solomon Islands Government' is *not* sufficient.¹⁴

Considering that in many cases the name of the suspect will not be known or capable of being determined before the issue of the warrant, it is *not* considered necessary to identify in the '*Information To Ground A Search Warrant*', the name of the person who has committed, or whom is suspected to have committed the offence/s.¹⁵

Property Sought

There *must* be '*information*' that will enable the issuing Magistrate/Justice of the Peace to conclude that there was a '*reasonable cause to suspect*' that the property as specified in the '*Information To Ground Search Warrant*' needs to be taken possession of in order to conduct an investigation into the specified offence by outlining '*information*' which shows how the property were related to the commission of the offence.

The property sought *must* be accurately identified.¹⁶

All available details *must* be included.

The '*search warrant*' *must* identify sufficiently specifically what property is authorised to be searched for and seized.¹⁷

Suspect

There *must* be '*information*' that will enable the issuing Magistrate/Justice of the Peace to conclude that there was a reasonable cause to suspect that the person as named, if any, had either:

- committed the offence as specified;
- or*
- assisted in the unlawful carrying away of the property as specified,

to the specified location.

¹⁴ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal).

¹⁵ *Coward v Allen* (1984) 52 ALR 320 at p. 330; *Trimboli v Onley* (No. 2) (1981) 56 FLR 317 at page 320 and *R v Tillett* (1969) 14 FLR 101 at pp. 112 – 114.

¹⁶ *Solomons Mutual Insurance Limited v Controller of Insurance and Director of Public Prosecutions* (Unreported Civil Case No. 114 of 1999; 31 July 2003; Palmer J; page 5.

¹⁷ *Arno v Forsyth* (1986) 65 ALR 125.

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Location

There *must* be '*information*' that will enable the issuing Magistrate/Justice of the Peace to conclude that there was a reasonable cause to suspect that the property sought is at the '*building*', '*ship*', '*vehicle*', '*box*', '*receptacle*' or '*place*', as specified.

'[T]he question whether the description is adequate or not must necessarily turn on the question whether it was so vague so as to cause confusion and difficulty in identifying the building or place to be searched.'¹⁸

It should be noted that section 101 of the *Criminal Procedure Code* (Ch. 7) refers to '*buildings*' and '*places*'.

However, the term '*place*' is *not* defined in either the *Criminal Procedure Code* (Ch. 7) or the *Interpretation and General Provisions Act* (Ch. 85).

The natural and ordinary meaning of that term in the context of the section 101 of the *Criminal Procedure Code* (Ch. 7) would *include* parks and other areas of land as distinct from buildings.

There needs to be full and accurate details of the specified '*building*', '*ship*', '*vehicle*', '*box*', '*receptacle*' or '*place*' which *shall* be named in the '*search warrant*'.¹⁹

This means that it is necessary to describe the location in respect of which the '*search warrant*' is issued with sufficient particularity to enable the occupier/s/owner objectively to determine that the '*search warrant*' relates to their '*building*', '*ship*', '*vehicle*', '*box*', '*receptacle*' or '*place*'.

Source Of Information

The name of the person providing '*information*' does *not* have to be disclosed on the '*Information To Ground Search Warrant*'.

There is a rule of law that the identity of '*police informers*' may *not* be disclosed in most legal proceedings.

An '*informer*' is 'a person who is not a member of the RSIP who informs police officers of facts relating to the proposed commission of offences and the criminals involved or of the identity of persons involved in the commission of criminal offences already committed'.²⁰

¹⁸ *Solomons Mutual Insurance Limited v Controller of Insurance and Director of Public Prosecutions* (Unreported Civil Case No. 114 of 1999; 31 July 2003; Palmer J; page 5.

¹⁹ *Criminal Procedure Code* (Ch. 7), section 101.

²⁰ *Re Gibson* (1991) 57 ACrimR 322, per Ambrose J at p. 331

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Execution

Section 102 of the *Criminal Procedure Code* (Ch. 7) states:

'Every search warrant may be issued on any day (including Sunday) and may be executed on any day (including Sunday) between the hours of sunrise and sunset, but the Magistrate or justice of the peace may, by the warrant, in his discretion, authorize the police officer or other person to whom it is addressed to execute it at any hour.' (emphasis added)

Section 103 of the *Criminal Procedure Code* (Ch. 7) states:

- (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free ingress thereto, and egress therefrom and afford all reasonable facilities for a search therein.
- (2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by sections 11 [*'Search of place entered by person sought to be arrested'*] or 12 [*'Power to break out of house or other place for purpose of liberation'*].
- (3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 16 [*'Mode Of Searching Women'*] shall be observed.

*'[...]If anything searched for be found, or any other thing there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.'*²¹ (emphasis added)

Section 105 of the *Criminal Procedure Code* (Ch. 7) provides:

- that every search warrant *shall* remain in force *until it is executed* or until it is cancelled by the court which issued it;
- and
- that a search warrant *may be executed at any place in Solomon Islands*.

²¹ *Criminal Procedure Code* (Ch. 7), section 101.

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Completion Of Search

Section 101 of the *Criminal Procedure Code* (Ch. 7) states (in part):

‘[...] If anything searched for be found, or any other thing there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, *to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.*’ (emphasis added)

‘When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.’²² (emphasis added)

‘There had been no *return o[f] the warrant made as required by s. 101* but the police have retained possession of the documents seized.’²³ (emphasis added)

Forms

The forms to be used are prescribed in the *Magistrates’ Courts (Forms) Rules* issued under section 76 of the *Magistrates’ Courts Act* (Ch. 20) are:

- ‘*Information To Ground Search Warrant*’, see **Appendix M**;
- and
- ‘*Search Warrant*’, see **Appendix N**.

²² *Criminal Procedure Code* (Ch. 7), section 104(1).

²³ *Maleli Zalao v Attorney – General and the Commissioner of Police* (Unrep. Civil Appeal Case No. 9 of 1996; Court of Appeal) at p. 5.

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[7.0] Confessional Evidence

[7.1] Introduction

Investigating officers are expected to conduct a '*record of interview*' with suspects/offenders/defendants, in addition to asking for a '*caution statement*'.

As regards a proforma '*record of interview*', refer to **Appendix K**.

As regards a proforma '*caution statement*', refer to **Appendix L**.

The importance of trying to conduct a '*record of interview*' is that in a '*caution statement*' the suspect/offender/defendant will only tell you what he/she wishes to tell you and not all the information which should be obtained if a thorough investigation is being conducted.

Prior to conducting a '*record of interview*' the investigating officer should have prepared his/her interview.

The aim of a '*record of interview*' and a '*caution statement*' is to:

- determine whether the suspect/offender/defendant is the person responsible for the commission of the offence;
- and
- negative any possible defence/s.

When questioning a suspect/offender/defendant it is important to consider:

- what was the state of mind of the suspect/offender/defendant at the time of the commission of the offence;
- what did the suspect/offender/defendant do;
- and
- who was there at the time.

Errors in a '*record of interview*' or a '*caution statement*' should be marked with a cross.

If a suspect/offender/defendant needs to go to the toilet during the course of a '*record of interview*' or taking of a '*caution statement*' then permission should be given.

Questioning of a young person, under the age of 18 years, should be conducted in the presence of a parent, close friend or relative of the young person, otherwise a court may rule that any admission was not '*voluntary*' and therefore, *inadmissible*.

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It is illegal to try to obtain a confession by means of force, an act of torture, cruel, inhuman or degrading treatment. Under such circumstances any confession would be ruled to be inadmissible by a court because all confessions *must* be proved to be 'voluntarily'.

'No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.'²⁴

'In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.'²⁵

'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.'²⁶

'No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment [...].

Commentary:

The *Universal Declaration of Human Rights* defined "torture" as follows:

"... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession [...]."²⁷

A police officer who uses unnecessary force may be charged with a criminal offence such as 'Common Assault'.

Where necessary an interpreter should be provided during interrogation.²⁸

The interrogation of a suspect/offender/defendant is perhaps the most important phase of any investigation. The ability to interrogate is a skill which *must* be practiced in order to be developed. Interrogation is *not* an exact science. However, the fundamentals can be taught and the importance of following proven procedures in interrogation *must* be appreciated. Proficiency comes with practice, study of capable interrogating officers and experience.

²⁴ *Constitution*, section 7.

²⁵ *International Human Rights Instrument* titled, 'Code of Conduct for Law Enforcement Officials', Article 2.

²⁶ *International Human Rights Instrument* titled, 'Code of Conduct for Law Enforcement Officials', Article 3.

²⁷ *International Human Rights Instrument* titled, 'Code of Conduct for Law Enforcement Officials', Article 5. See also: 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.

²⁸ *International Human Rights Instrument* titled, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', Principle 14. See also section 10(2) of the *Constitution*.

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In some investigations, the only available evidence occurs as a direct result of interrogation. Physical and scientific evidence have compelling probative value, but where such evidence simply does not exist, the only prospect of a solution to the commission of an offence is through confessional evidence gained by pure interrogation. Naturally, if a confession is obtained every effort should be made to obtain corroboration by virtue of other evidence, including obtaining statements of witnesses and/or physical evidence.

Interrogation is a vital part of investigations and one of the essential tools of the investigating officer.

However, it is *not* necessary to try to obtain confessional evidence in respect of every offence. For example, it is *not* necessary in the investigation of a '*public order offence*' which you observe being committed.

[7.2] Timing Of The Interrogation

The investigating officer *must* endeavour to interview the suspect/offender/defendant as soon as practicable after the commission of the offence, thereby eliminating any risk of distortion or misinterpretation of facts.

However, if the suspect/offender/defendant is under the age of 18 years, and there is the possibility of the suspect/offender/defendant being tired at night then the questioning should *not* commence until the following morning.

The interrogation *must*:

- be based on proven procedures for establishing the truth of the offence under investigation;
 - be developed systematically and according to a plan and after adequate preparation;
- and
- comply with the rule of law.

[7.3] Preparation

Preparation establishes how effective the actual interrogation will be. Ideally, prior to conducting an interview the investigating officer should have:

- knowledge of the law relevant to the commission of the offence, including the law relating to the elements of the offence and any possible defences which may be raised;

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- interviewed the victim, if a thorough statement had not been obtained;
- interviewed other witnesses, if thorough statements have not been obtained;
- read all relevant documentation, including statements;
- and
- visited the crime scene, in appropriate circumstances.

In *R v Lokumana and Ihonoda* (Unrep. Criminal Case No. 32 of 1987) Ward CJ stated at pages 4 – 5:

‘There is nothing wrong with an officer preparing his questions before an interview. Having prepared them, he is wise to write them down. However, the record of the interview in which they are put to the suspect must be prepared in such a way that all the relevant conversation is recorded. That could include denials or admissions either of which may be lengthy. Unless they are clearly of no relevance, they must be recorded by the officer.

Similarly, if a question is repeated and elicits a different reply the second time, both the repeated questions and new answers must be recorded.

From this it must be apparent that the interviewing officer who writes his questions in advance, should, as the interview progress, write the question again in the interview record as or before he asks it and then note the reply before he writes the next question. To prepare a document, as was done in this case, with a small space for the answer is liable to encourage the interviewing officer to restrict the answer recorded by editing it or omitting all or part of it.

[...]

No interviewing officer is bound by the suspect’s answers. In many cases, he is wise, despite a denial, to rephrase the question or to try a different approach to the same topic. Sometimes it is worth returning to it after other matters have been explored. This may all take time and that, in itself, is not necessarily wrong. However, if the protection of the caution is to have any reality, there must be some limit. That limit will vary according to the circumstances of the case, the accused and the conditions of the interview.’

[7.4] Location Of The Interrogation

Suspects/offenders/defendants should be transported to a police station for questioning, unless the suspect/offender/defendant is a prisoner who is in custody in a prison and it has been decided to interview that suspect/offender/defendant within a prison.

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'An Officer in Charge may deliver a prisoner into police custody in connection with the investigation of a crime on the production of an order in writing which shall, in the case of an unconvicted prisoner, be signed by a police officer in charge of a police station or a police officer of or above the rank of Inspector, and, in the case of a convicted prisoner, by a police officer of or above the rank of Senior Inspector. [Inspector]²⁹

Section 88 of the *Prisons Regulations* (Ch. 111) provides that a prisoner may be interviewed inside a prison, subject to the specified conditions.

That section states:

- (1) Subject to the provisions of paragraph (2), a police officer, with the approval of the Officer in Charge and on production of an order in writing from a police officer in charge of a police station or other police officer of or above the rank of Inspector, may, in the sight and hearing of a prison officer, interview within a prison any prisoner for purposes connected with the investigation of any offence whatsoever.
- (2) If the Officer in Charge is satisfied that a prisoner is willing to be interviewed by police officers out of the sight and hearing of a prison officer, then the Officer in Charge may permit that prisoner to be interviewed by not less than two police officers within the prison and out of the sight and hearing of a prison officer.'

See Appendices G to J.

[7.5] Questioning

The objective of questioning is to discover the truth about the offence under investigation, to gather information and to obtain evidence.

Questions should focus on:

- '*proving the elements of the charge*';
- and
- '*negating any defence/s raised*'.

All issues raised during a '*record of interview*' should be clarified. For example, if the suspect/offender/defendant states that he broke into the house at night, the next question should be, 'At what time did you break into the house?'.

²⁹ *Prisons Regulations* (Ch. 111), section 89.

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Questions should be:

Simple	The questions should be easily understood. How, when, where, etc.
Short	Questions should be short as possible.
Logical	Questions should be asked in a logical sequence.
Singularly	One question should be asked at a time and not multiple questions in a single question.

The '*open*' questions to which the investigating officer seeks answers from a suspect/offender/defendant are as follows:

What	What happened?
When	When was the offence committed?
Where	Where was the offence committed?
Why	Why was the offence committed?
Who	Who committed the offence?
How	How was the offence committed?

Open questions are generally broad answers and are used when it is necessary to elaborate on a particular issue.

Under no circumstances should a multiple question be asked. For example, 'Where did you go next and who did you go with?'

POLICE POWERS

[7.6] Interrogation Pitfalls

There are many pitfalls which can be encountered when interrogating as follows:

Anger	Anger is a forerunner for defeat. An investigating officer should <i>never</i> get angry when conducting an investigation and especially when questioning a suspect/offender/defendant.
Threats	An investigating officer who resorts to threats has lost the control over the interview and the admissibility of an subsequent admissions may be challenged.
Ill - prepared	The investigating officer should <i>not</i> conduct an interview, unless he/she is appropriately prepared.
Prejudices	The investigating officer <i>must</i> disregard personal feelings, be unbiased and completely objective, influenced only by the facts.
Degrading the Suspect/Offender/Defendant	Regardless of the offence committed, the suspect/offender/defendant is a human being and <i>must</i> be treated as such.

[7.7] Compliance With The Rule Of Law

Introduction

All arrested or detained persons shall have access to a lawyer and adequate opportunity to communicate with their representative.³⁰

³⁰ *International Human Rights Instruments* titled, 'Universal Declaration of Human Rights', Article 11; 'International Covenant on Civil and Political Rights', Article 14; 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', Principles 17 and 18; and 'Standard Minimum Rules for the Treatment of Prisoners', Rule 93.

POLICE POWERS

Constitution

Section 10(2) of the *Constitution* states (in part):

‘Every person who is charged with a criminal offence –

- (a) *shall* be presumed to be innocent until he is proved or has pleaded guilty;
- (b) *shall* be informed as soon as reasonably practicable, in detail and in a language that he understands, of the nature of the offence charged;
- (c) *shall* be given adequate time and facilities for the preparation of his defence;
- (d) *shall* be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice.’ (emphasis added)

Judges’ Rules

‘The Judge’s Rules of the English High Court, once applied in the Solomon Islands, were replaced by the rules issued by Daly CJ in the early 1980’s. These rules are essentially the same as the English rules but have the added advantage of Pidgin translations of the various cautionary statements.’³¹

‘A breach of the old Judge’s Rules or the new Solomon Islands Judge’s Rules does not automatically mean that a statement must be excluded; the Rules were, and are, rules of guidance, not of law, to assist the court in deciding upon the matter of fairness in the circumstances.’³²

It is important that police officers use the exact wording as contained in the Judge’s Rules of Solomon Islands.

The failure to warn a defendant of his/her ‘*right to silence*’ at the commencement of a ‘*record of interview*’ or ‘*caution statement*’ will render it *inadmissible*.

Questions and answers should be recorded during the ‘*record of interview*’.

All officers present during a ‘*record of interview*’ should read and if satisfied that it is an accurate account, sign it.

The suspect/offender/defendant should be asked to read a ‘*record of interview*’ and/or a ‘*caution statement*’ or alternatively read the ‘*record of interview*’ and/or ‘*caution statement*’ to him/her in a language that he/she understands.

³¹ *Joel Nanango v R* (Unrep. Criminal Appeal Case No. 4 of 1996), p. 2:

³² *Ben Tofola v R* (Unrep. Criminal Appeal No. 2 of 1993), p. 8.

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The suspect/offender/defendant should be then asked to sign/mark the '*record of interview*' and/or '*caution statement*' if he/she is satisfied that it is an accurate record of the conversation.

The suspect/offender/defendant however *cannot* be compelled to read, listen to it being read or sign/mark a '*record of interview*' and/or a '*caution statement*'.

Upon being charged the suspect/offender/defendant *should* be warned whether he/she wishes to say anything about the offence committed in compliance with the Judges' Rules.

The following are the current Judge's Rules applicable in Solomon Islands issued by Daly CJ as '*Practice Direction No. 2 of 1982*':

'RULES BY CHIEF JUSTICE ON INTERVIEWS IN CONNECTION WITH CRIME

(These Rules replace the Judge's Rules of the English High Court Judges which have been applied up to now in Solomon Islands. The Rules have been produced after wide consultation.

The pidgin version uses the spelling of words at present used in Solomon Islands in official publications. However should it be found that another form of spelling is more easy for police and suspects to understand then there is no objection to that spelling being used. The important thing is for the sense to be retained.)

Preliminary:

Courts want to be fair to police officer who have a hard job to do in bringing cases to court but also to be fair to persons who are suspected and accused of crimes. The law says that if a man says something it may be brought up in court as evidence. But the court must be satisfied that the man said what he did of his own free will, that is, that he was not forced or threatened or promised something and he knew what he was doing. The following rules should be used in relation to interviews as then the court can see that a man was given the right warnings.

There are four stages in the interview of persons in connection with criminal offences. These rules set out what a police officer or other person in authority shall do at each stage so that a court can see that the interview was kept fair. If the interview is not fair because these Rules have not been kept or some other reason the court may refuse to hear evidence of what a person said.

POLICE POWERS

Stage 1: Interviewing Witnesses

A police officer has a right to ask and record any questions or answers or statements when interviewing witnesses. Before the police officer has strong evidence that a crime has been committed, and that the person interviewed has committed it, all persons are interviewed as witnesses. ('Strong evidence' here means strong evidence that could prove before a court that the person is guilty).

Stage 2: Interviewing Suspects

When a police officer has strong evidence that a person has committed an offence he shall warn him to be careful of what he says. All warnings should be in a language easily understood by the person warned. All persons under arrest or in custody shall be so warned. This is so a court will know that the person was talking seriously and understood what he was doing. This warning given to suspects shall be –

(Suspect Interview Warning)

"If you want to remain silent you may do so. But if you want to tell your side you think carefully about what you say because I shall write what you say down and may tell a court what you say if you go to court. Do you understand?"

In Pidgin:

"Sapos in laek fo stap kwaet no moa iu save duim. Bat sapos in laek fo tell aot stori blong iu iu tink hevi nao long wannem nao iu tellem. Bae mi ratem kam samting nao iu tellem. Sapos iu go long court bae maet me tellem disfella court toktok blong iu. In minim?"

Questions and answers should be recorded either during the interview or very shortly after it and agreed by all police officers present. The date and time when questioning began and finished should be written down together with the names of all present.

The best thing is for the suspect to also agree and sign the record but this is not essential.

Stage 3: Taking of written statement from suspect

Again it is important that a person against whom there is strong evidence that could prove he has committed an offence should only make a written statement after warning of what he is doing.

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A. If he wishes to make a written statement this warning shall be given:

(Suspect Statement Invitation)

"If you wish to remain silent you may do so. If you wish to, you may give a written statement. You can write it or I will. That is up to you. If you give a written statement it may be produced to a court if you go to court. Do you wish to give a written statement?"

In Pidgin:

"Sapos iu laek fo stap kwaet no moa in save duim. Sapos iu laekem iu save givem stori blong iu long paper. Iu save raetem kam seleva o mi save raetem. Hemi saed blong iu. Sapos iu givvem wan fela stori long paper ia bae misfella save taken disfella paper long court for showem long court ia sapos iu go long court. Waswe, iu laek fo givvem stori blong iu long paper?"

B. If the suspect agrees and asks the police officer to write the statement it should start:

(Suspect Statement Start)

"I agree to give this statement of my own free will. I want the policeman to write down my statement. I have been told I can remain silent. I know the statement may be used in court. It is true what I now put in the statement."

In Pidgin:

"Mi seleva agree fo givvem stori blong mi long paper. Mi laekem policeman fo raetem kam stori blong mi. Olketa tellem mi finis mi save stap kwaet no moa. Mi save tu disfella paper ia might hem kamap long court. Stori bae me tellem hem turu wan."

(If the suspect writes the statement himself leave out the words "I want the policeman to write down my statement" or their pidgin equivalent)

This should be signed first or the suspect's mark affixed and the statement then written by the suspect or told by him to the police officer who writes it down in the words used.

The suspect should be given a chance to read the statement or it should be read to him. He should be asked if he wants to alter anything, correct anything or add anything. If he says he does, alterations should be made as requested or he should make the alterations himself. There should then be added the following certificate;

(Suspect Statement End)

"I understand what is in the statement which I have read (or "which has been read to me"). It is true."

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In Pidgin:

“Mi save gudfella wannem nao in saet long disfella paper ia. Mi readem finis (o “olketa readem hem kam long me finis”). Evri samting hem turu noa.”

This certificate should be signed by the suspect (or his mark affixed to it) and signed by any persons present. If the suspect refuses to sign or affix his mark, this fact should be noted on the statement. The date and time when the statement is finished should be recorded.

Stage 4: Charging of Accused Person

When a person is charged, the charge should be read to him. Afterwards he should be warned as follows:--

“Do you wish to say anything about this offence which it is said you have committed? If so, I will write down what you say and the court may hear what you say. You may remain silent if you wish.”

In Pidgin:

“Iu laek fo tellem eni samting about disfella samting ia wannem olketa say iu duim? Sapos iu tellem eni samting bae mi raetem and bae mi save tellem disfella samting long court. Sapos iu laek fo stap kwaet no moa iu save duim.”

(Stage 4 is the formal charge when the case is ready to go to court. When a man is arrested he must be told why he is arrested but that is not the time when he is charged for this stage.)

When a police officer has strong evidence against a defendant he/she is *required* to warn that person that he/she has the ‘*right to silence*’, as outlined in the Judges’ Rules [‘*Read out the Warning*’];

In *Ben Tofola v R* (Unrep. Criminal Appeal No. 2 of 1993) the Court of Appeal held at page 8:

‘It is recognized that Rule 8 of the old Judge’s Rules, which would have been applicable in these circumstances, no longer formally applies as a part of the guidelines that judges use in deciding upon fairness. The old Judge’s Rules have been replaced by Rules made by the Chief Justice in, we understand, 1982. Those Rules, which for want of a better name may be referred to as the Solomon Islands Judge’s Rules, do not contain an equivalent Rule to Rule 8 of the old Rules.

It is our view, however, that in considering whether a challenge to a confessional statement made in circumstances to which the old Rule 8 would have applied, a Judge is likely to have regard to the approach taken by the old Rule since its purpose, and the reasons for it, still remain as sound as ever.’ (emphasis added)

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Rule 8 of the old '*Judges' Rules of England*' is as follows:

'When two or more persons are charged with the same offence, and statements are taken separately from the persons charged, the police should not read these statements to the other person charged, but each of such persons should be furnished by the police with a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply the usual caution should be administered.'³³

Right To Silence

The '*right to silence*' means 'No Man is to be compelled to incriminate himself; *nemo tenetur se ipsum prodere*'.³⁴

No pressure, physical or mental, shall be exerted on suspects in attempting to obtain information.³⁵

Therefore, a suspect/offender/defendant *cannot* be compelled to say anything, unless he/she chooses of his/her own free will.³⁶

Torture and other inhuman or degrading treatment in order to try to obtain a confession is absolutely prohibited.

In *R v Nelson Keaviri, Julius Palmer, Patrick Mare Kilatu, Keto Hebala and Willie Zomoro* (Unrep. Criminal Case No. 20 of 1995 [Judgment]) Muria CJ held at pages 8 – 9:

'When one compares the rule as I outlined [,referring to the warning to be given before the '*Taking of written statement from suspect*',]with the warning given by the police to the accused one sees the obvious difference. There is a clear omission of the warning that the accused has a [r]ight to remain silent. This part of the warning is important in this country for three reasons.

Firstly, it *must* be remembered that [...] our Judges Rules were made after 1978 and clearly the fundamental rights of a person suspected of a criminal offence as [...] protected] under the *Constitution* must be borne in mind.

³³ (1930) 24 QJP 150.

³⁴ *R v Sang* (1979) 69 CrAppR 282; [1980] AC 402; [1979] 3 WLR 263; [1979] 2 AllER 1222; [1979] CrimLR 282.

³⁵ *International Human Rights Instruments* titled, '*United Nations Code of Conduct for Law Enforcement Officials*', Article 2; and '*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*', Principles 1, 17, 18, 21, 23 and 36.

³⁶ *Constitution*, section 10(7) and *Criminal Procedure Code* (Ch. 7), section 198(1). See also *International Human Rights Instruments* titled, '*Universal Declaration of Human Rights*', Article 11(1); '*United Nations Code of Conduct for Law Enforcement Officials*', Article 14(3)(g); '*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*', Principles 21, 23 and 36; and '*Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions*', Principles 9, 10 and 11.

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Secondly, the right to seek legal assistance is also that does not come easily in view of the limited manpower resources that we have. A suspect or an accused person must be given the opportunity to obtain legal advice or assistance. It is important therefore to advise a suspect of his right to remain silent in order that he been given the opportunity to make use of his constitutional right to seek the assistance of a lawyer.

Thirdly, an accused person who is in official custody is in an environment which is not familiar to him. There may not be any threat or actual violence exerted upon him while in that custody. But the potential for such an occurrence in such an environment cannot be simply ignored as far as the person in custody is concerned. In such a situation he must still be given the opportunity to appreciate his right to remain silent despite in such an unfamiliar environment.

It was the warning given to these accused upon which the fate of their caution statement now turns. The breach of the Rule as I see it in this case is not just a defect in the wording of the warning but a fundamental omission in the warning itself which has an impact on the fundamental rights of the accused to remain silent. The interviewing officer or authority must ensure that such a right should not be overlooked. It is both in the interest of the suspect or accused as well as the interviewing authority.

[...]

This court however is required by law to ensure that the rights of an individual, including those accused of committing crimes are protected. This it will do by ensuring compliance with the rules and other legal provisions in this regard. In this case the provisions of the Judges Rules to which I have already referred had not been complied with. *That non compliance in this case clearly offends section 10 of the Constitution and is therefore fundamental and as such it renders the caution statements though admissible taken in respect of each of these accused liable to be excluded in the exercise of the courts discretion.*

That discretion I now exercise and I rule that the caution statement of each of these accused be excluded.’ (emphasis added)

In *Kim Kae Jun and the Crew of the Vessel No. 1 New Star v The Director of Public Prosecutions and the Commissioner of Police* (Unrep. Civil Case No. 423 of 1999) Palmer J stated at page 4:

‘The right to remain silent is a constitutional right to which everyone in this country is entitled, citizens and non – citizens alike. Section 3 of the *Constitution* guarantees the protection of the right to life, liberty, security of the person and protection of the law. Although not specifically mentioned, that provision, in its broad application, must accord a right to silence to an accused, detained person or a suspected person who is under investigation. Once such person exercised his or her constitutional right to remain silent he or she cannot be compelled to give his statement to anyone unless otherwise ordered by the Court.’

POLICE POWERS

[7.8] Challenging Admissibility Of Confessional Evidence

Introduction

A '*Voir Dire Proceedings*', also referred to as '*A Trial Within A Trial*', is conducted in order to determine the admissibility of '*confession evidence*'.

The admissibility of '*confessional evidence*' may be challenged on two grounds:

- '*Voluntariness*';
- and/or
- '*Unfairness*'.

If the admissibility of '*confessional evidence*' is challenged all officers who were present when the '*record of interview*' or '*caution statement*' was obtained are expected to give evidence regarding the procedure adopted in order to attain such '*confessional evidence*'.

If all such officers do not give evidence then a court may rightly infer that the correct procedure was *not* followed and rule that the '*confessional evidence*' is inadmissible.

Voluntariness

'*Voluntariness*' refers to obtaining '*confessional evidence*' from a suspect/offender/defendant against his/her own free will.

As regards the issue of '*voluntariness*', '*confessional evidence*' should *not* be obtained as a consequence of:

- any '*fear of prejudice*', ie., being treated differently than other persons in the same position;
- '*hope of advantage*', for example, the granting of bail;
- or
- '*oppression*', ie., harsh or improper treatment.

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Fairness

As regards the issue of '*fairness*', '*confessional evidence*' should *not* be obtained by:

- asking a suspect/offender/defendant to reply to the contents of a '*record of interview*' or '*caution statement*' of another suspect/offender/defendant;
- or
- failing to warn a suspect/offender/defendant of his/her '*right to silence*' in compliance with the Judges' Rules.

Voir Dire Procedure

The procedure to be followed in a '*voir dire proceedings*' is as follows:

1. The defendant's lawyer in the absence of the investigating officer should specify the grounds upon which the admissibility of the '*confessional evidence*' is being challenged.
2. The prosecution should then call the investigating officer and led that officer's evidence specifically in relation to the issues raised by the defence.
3. The prosecution may then call such other witnesses present during the taking of the '*confessional evidence*' in order to prove its admissibility '*beyond reasonable doubt*'.
4. The defendant's lawyer may then call such witnesses as he/she thinks proper, including the defendant, on the issues raised on the challenge to admissibility of the '*confessional evidence*'.
5. The defendant's lawyer then addresses the court followed by the prosecution.
- and
6. The Court then rules on the admissibility of the '*confessional evidence*'.

During the course of the '*voir dire proceedings*' the court *may* exercise its discretion and look at the '*confessional evidence*', ie., '*record of interview*' and/or '*caution statement*' in order to determine solely its admissibility.

POLICE POWERS

[7.9] Unadopted Confessional Evidence

Unadopted confessional evidence may *not* be tendered as an '*exhibit*' by an investigating officer because such statements have *not* been adopted by a suspect/offender/defendant.³⁷

However, the investigating officer may use such statements to refresh his/her memory in Court.

Obviously, the admissibility of unadopted confessional evidence will be closely scrutinised by a Court, if a defendant makes any denials in respect to it.

Unless a suspect/offender/defendant adopts a '*record of interview*' or a '*caution statement*' by either:

- '*signing it*';
 - '*reading it*';
- or
- '*having it read*' and agreeing that it is correct,

it can *not* be tendered as an '*exhibit*' to a Court.

In such circumstances such '*confessional evidence*' may be referred to by the investigating officer for the purpose of refreshing his/her memory and read to the Court on that basis.

By adopting a '*record of interview*' or a '*caution statement*' the suspect/offender/defendant is acknowledging that the contents are true and correct.

A suspect/offender/defendant should *never* be forced or feel compelled to adopt a '*record of interview*' or a '*caution statement*'.

³⁷ *Dillon* (1987) 85 CrAppR 29.

POLICE POWERS

[7.10] Proformas

As regards proformas for:

- a '*record of interview*', refer to **Appendix K**;
- and
- a '*caution statement*', refer to **Appendix L**.

RECKLESS OR DANGEROUS DRIVING

[1.0] Introduction

This chapter will examine the offences of:

- [i] 'Causing Death By Reckless Or Dangerous Driving', as provided for by section 38 of the *Traffic Act* (Ch. 131);

and

- [ii] 'Reckless Or Dangerous Driving', as provided for by section 39(1) of the *Traffic Act* (Ch. 131).

For the purpose of consistency the offences under the *Traffic Act* (Ch. 133) should be interpreted

'in accordance with the *Interpretation and General Provisions Act* and the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith', see section 3 of the *Penal Code* (Ch. 26).

See also the *Road Traffic Act* (1960) (UK).

Section 75 of the *Traffic Act* (Ch. 131) states (in part):

'Where a person is prosecuted for an offence under any of the sections of this Act relating to respectively [...], to reckless or dangerous driving, [...], he shall not be convicted unless --

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under [such sections] would be considered;
- (b) within fourteen days of the commission of the offence a summons for the offence was served on him; or
- (c) within the said fourteen days a notice of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that --

- (i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that --

RECKLESS OR DANGEROUS DRIVING

- (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or
- (b) the accused by his own conduct contributed to the failure;
- (ii) the requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.'

[2.0] Causing Death By Reckless Or Dangerous Driving

[2.1] Offence

Section 38 of the *Traffic Act* (Ch. 131) states:

'A person who causes the death of another person by the driving of a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, shall be guilty of an offence [...].'

See section 1 of the *Road Traffic Act* (1960) (UK).

[2.2] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did cause the death of another person namely [specify the name of the victim] by the driving of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] [recklessly **or** (at a speed **and** / **or** in a manner)] which was dangerous to the public] having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the said road by [specify the driving of the defendant].'

It is permissible to charge a defendant with 'driving at a speed *and* in a manner dangerous to the public', see *R v Clow* (1963) 47 CrAppR 136.

See also: *R v Wilmot* (1933) 24 CrAppR 63 & *Ben Donga v R* (Unrep. Criminal Appeal Case No. 16 of 1994; Palmer J).

RECKLESS OR DANGEROUS DRIVING

[2.3] Elements

- A. Defendant
- B. Place
- C. Date
- D. Cause The Death Of Victim
- E. Driving
- F. Motor Vehicle
- G. Road
- H.
 - [1] Recklessly; or
 - [2]
 - [i] At A Speed; or
 - [ii] In A MannerDangerous To The Public
- I. Having Regard To All The Circumstances Of The Case Including The Nature, Condition And Use Of The Road, And The Amount Of Traffic Which Is Actually At The Time, Or Which Might Reasonably Be Expected To Be, On The Road

[2.4] Related Offence

Section 165 of the *Criminal Procedure Code* (Ch. 7) states:

‘When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 39 or section 40 of the Traffic Act he may be convicted of that offence although he was not charged with it.’

As regards the offence of ‘*Manslaughter*’, Lord Roskill in *Government of the United States of America v Jennings & another* (1982) 75 CrAppR 367; [1982] 3 WLR 450 stated at pages 377 & 406 respectively:

‘[... P]rosecuting authorities today would only prosecute for manslaughter in the case of death caused by the reckless driving of a motor vehicle on a road in a very grave case.’

See also: *R v Seymour* (1983) 77 CrAppR 215 at page 219.

RECKLESS OR DANGEROUS DRIVING

[2.5] Disqualification Of Drivers' Licenses

As regards the '*Disqualification Of Drivers' Licenses*', refer to page **133**.

[3.0] Reckless Or Dangerous Driving

[3.1] Offence

Section 39(1) of the *Traffic Act* (Ch. 131) states:

'If a person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be guilty of an offence [...].'

[3.2] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] [recklessly **or** (at a speed **or** in a manner) which was dangerous to the public] having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the said road by [specify the driving of the defendant].'

[3.3] Elements

- A. Defendant
- B. Place
- C. Date
- D. Drive
- E. Motor Vehicle
- F. Road
- G. [1] Recklessly; or
[2] [i] At A Speed; or
[ii] In A Manner
Dangerous To The Public

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- H. Having Regard To All The Circumstances Of The Case Including The Nature, Condition And Use Of The Road, And The Amount Of Traffic Which Is Actually At The Time, Or Which Might Reasonably Be Expected To Be, On The Road

It is permissible to charge a defendant with 'driving at a speed *and* in a manner dangerous to the public', see *R v Clow* (1963) 47 CrAppR 136.

See also: *R v Wilmot* (1933) 24 CrAppR 63 & *Ben Donga v R* (Unrep. Criminal Appeal Case No. 16 of 1994; Palmer J).

[3.4] Disqualification Of Drivers' Licenses

As regards the '*Disqualification Of Drivers' Licenses*', refer to page **133**.

[3.5] Related Offences

The following offences are related to the offence of '*Reckless Or Dangerous Driving*':

- '*Careless Or Inconsiderate Driving*', as provided for by section 40 of the *Traffic Act* (Ch. 133). That offence is examined commencing on page **73**;
- and
- '*Reckless Or Dangerous Cycling*', as provided for by section 49 of the *Traffic Act* (Ch. 133).

That section states:

'If a person rides a bicycle or tricycle, not being a motor vehicle, on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, he shall be guilty of an offence [...].'

The wording of the charge is as follows:

'did ride a [bicycle **or** tricycle] not being a motor vehicle on a road namely [specify the name of the road] [recklessly **or** (at a speed **or** in a manner) which was dangerous to the public] having regard to all the circumstances of the case including the nature condition and use of the said road and the amount of traffic which was actually at the time or which might have been reasonably be expected to be on the said road by [specify the manner of driving].'

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[4.0] Drive

The term '*Drive*' is defined in section 2 of the *Traffic Act* (Ch. 131) in relation to a motor vehicle as *including*:

'the steering of a motor vehicle'.

In *R v McDonagh* [1974] QB 448; [1974] 2 AllER 257 [(1974) 59 CrAppR 55; [1974] 2 WLR 529; [1974] RTR 372; [1974] CrimLR 317] Lord Widgery stated at pages 451 and 258 respectively:

'[I]n its simplest meaning we think that [... the word 'drive'] refers to a person using the driver's controls for the purpose of directing the movement of the vehicle. It matters not that the vehicle is not moving under its own power, or is being driven by the force of gravity, or even that it is being pushed by other well – wishers. *The essence of driving is the use of the driver's controls in order to direct the movement, however movement is produced.*' (emphasis added) [words in brackets added]

In *Hill v Baxter* (1957) 42 CrAppR 51 Person J commented at page 60:

'In any ordinary case, when once it has been proved that the accused was in the driving seat of a moving car, there is *prima facie* an obvious and irresistible inference that he was driving it.' (emphasis added)

As to the proof of the identity of the driver when two persons are seen to run from the motor vehicle, see *Smith v Mellors & Soar* (1987) 84 CrAppR 279.

See also: *R v Price* (1968) 52 CrAppR 25; *Campbell v Tormey* (1969) 53 CrAppR 99; *Pinner v Everett* [1969] 1 WLR 1266; *R v Jones* (1970) 54 CrAppR 148 at page 152; *McKeon v Ellis* [1987] RTR 26; *Allan v Quinlan, Ex parte Allan* [1987] 1 QdR 213; *Blayney v Knight* (1975) 60 CrAppR 269; *Cooley v Lowe* (1984) 1 MVR 455; *Williams v Urie* (1984) 1 MVR 311; *Tink v Francis* [1983] 2 VR 17; *Bassell v McGuinness* (1981) 29 SASR 508; *Hampton v Martin* [1981] 2 NSWLR 782 at page 796; *Hart v Rankin* [1979] WAR 144; *McNaughton v Garland* [1979] QdR 240 at page 244; *McGrath v Cooper* [1976] VR 518; *R v Clayton* [1973] 2 NZLR 211 & *Caughey v Spacek* [1968] VR 535.

[5.0] Motor Vehicle

The term '*Motor Vehicle*' is defined in section 2 of the *Traffic Act* (Ch. 131) as *meaning*:

'any *mechanically propelled vehicle*, excluding any vehicle running on a specially prepared way such as a railway or tramway or any vehicle deriving its power from overhead electric power cables or such other vehicles as may from time to time by regulations under this Act be declared not to be motor vehicles for the purpose of this Act.' (emphasis added)

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A vehicle is *not* a 'mechanically propelled vehicle' unless the motor vehicle in question has reached the stage where there is no reasonable prospect of it ever being made mobile again as a mechanically propelled vehicle, then it will remain a mechanically propelled vehicle for its life, see *Binks v Department of the Environment* [1975] RTR 318; *Mc Eachran v Hurst* [1978] RTR 462; [1978] CrimLR 499 & *Reader v Bunyard* (1987) 85 CrAppR 185; [1987] RTR 406; [1987] CrimLR 274.

[6.0] Road

The term '*Road*' is defined in section 2 of the *Traffic Act* (Ch. 131) as meaning:

'any public road within the meaning of the Roads Act or any Act replacing that Act and *includes* any other road or way, wharf or car park on which vehicles are capable of travelling and to which the public has access, and includes a bridge over which a road passes.' (emphasis added)

The term '*Road*' is *not* defined in the *Roads Act* (Ch. 129).

See: *Ling Ainui v Luke Ouki* [1977] PNGLR 11 at page 12; *Clarke v Kato & others* [1997] 1 WLR 208; *Hansen v Appo*; *Ex parte Appo* [1974] QdR 259 & *O'Mara v Lowe*; *Ex parte O'Mara* [1971] QWN 34.

[7.0] Recklessly

In *R v Lawrence* (1981) 73 CrAppR 1; [1982] AC 510 [[1981] 1 AllER 974; [1981] 2 WLR 524; [1981] RTR 217; [1981] CrimLR 409] Lord Diplock, with whom Lords Fraser, Roskill & Bridge concurred, held at pages 11 & 526 respectively:

'In my view, an appropriate instruction to the jury on what is meant by driving recklessly would be that they must be satisfied of two things: *First, that the defendant was in fact driving the vehicle in such a manner as to create an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to property; and secondly, that in driving in that manner the defendant did so without having given any thought to the possibility of there being any such risk or, having recognised that there was some risk involved had nonetheless gone on to take it.* It is for the jury to decide whether the risk created by the manner in which the vehicle was being driven was both obvious and serious and, in deciding this, they may apply the standard of the ordinary prudent motorist as represented by themselves. [*'Objective Test'*] If satisfied that an obvious and serious risk was created by the manner of the defendant's driving, the jury are entitled to infer that he was in one or other of the states of mind required to constitute the offence and will probably do so; but regard must be given to any explanation he gives as to his state of mind which may displace the inference.' (emphasis added) [words in brackets added]

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In *R v Boswell, Elliott, Daley & Rafferty* (1984) 79 CrAppR 277 [[1984] 3 AllER 353; [1984] 1 WLR 1047; [1984] RTR 315; [1984] CrimLR 502] Lord Lane CJ, delivering the judgment of the Court, after referring to the abovementioned statement, stated at page 281:

‘To be guilty the defendant must have created an obvious and serious risk of injury to person or damage to property and must either have given no thought to the possibility of that obvious risk, or have seen the risk and nevertheless decided to run it, although he had seen it.’

In *R v Clarke* (1990) 91 CrAppR 69 Russell LJ, delivering the judgment of the Court, stated at page 73:

‘Our understanding of the *Lawrence* direction is as follows. The jury first have to make their findings as to what happened. Once they have done that they ask themselves whether those findings disclose that the vehicle, with the defendant at the wheel, created, adopting reasonable standards, an obvious and serious risk of injury to some other person who might happen to be using the road or of doing substantial damage to property. That is the first limb of the *Lawrence* direction and we are satisfied, contrary to the submissions of Mr. Elias, that it does not involve any consideration of the reason why the defendant was driving so as to create such a risk (save perhaps in those cases where the defendant is not “driving” at all by reason of some physical incapacity, not self – induced, but rendering him incapable of physical control of the vehicle).

[...]

If, but only if, the jury answer the first limb in the affirmative, they must then go on to consider the second limb, and it is here in our judgment that the jury may, if they think fit, take into account the effect of drink upon the driver provided always that they are sure that the effect was a real one. The consumption of drink may have so disinhibited the driver that he does not give any thought to the possibility of there being any risk, or he may have taken the risk when he would not have done so had he not been affected by alcohol.

We do not accept that unless and until the consumption of alcohol plays a part in the driving, to the knowledge of the defendant, the jury should eliminate it from their deliberations.’

In *R v Griffiths* (1988) 89 CrAppR 6 Parker LJ, delivering the judgment of the Court, stated at pages 9 – 10:

‘The result of *R v Lawrence* (*supra*) and the earlier cases is as follows: (1) If the first limb of the test is satisfied and there is nothing more the jury may convict; (2) if the prosecution wish to strengthen the inference which may be drawn from the fact that the first limb is satisfied, or to displace any explanation advanced by the driver, they can do so by any evidence which is admissible; and (3) evidence of alcoholic consumption sufficient to impair control is admissible for this purpose.’

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In *R v Crossman* (1986) 82 CrAppR 333 Lord Lane CJ, delivering the judgment of the Court, held at page 336:

‘The jury could, and no doubt would, have found that the appellant foresaw the high degree of risk that the load would fall off and if it did might injure someone, but nevertheless decided to run that risk. He caused that risk, or put it into operation by driving the vehicle on to the road. He was driving with the knowledge that by doing so, however slowly, however gingerly, however carefully he drove, he was putting other road users at risk of serious injury or death. This seems to us to fall quite clearly as a matter of simple wording under the expression “reckless driving”, driving with the knowledge that by moving the vehicle along the road at all, he was running the serious risk of injuring someone. That, in our view, was reckless driving [...].’

See also: *R v Woodward* [1995] 2 CrAppR 388 at page 393; *R v Reid* (1990) 91 CrAppR 263; *R v Seymour* [1983] 3 WLR 349; [1983] 2 AllER 1058; [1983] 2 AC 493; [1983] RTR 455; [1983] CrimLR 742; (1983) 77 CrAppR 215; *R v Lamb* (1990) 91 CrAppR 181 & *R v Madigan* (1982) 75 CrAppR 145.

[8.0] Dangerously

In *R v Gosney* (1971) 55 CrAppR 502; [1971] 2 QB 674 [[1971] 3 AllER 220], Megaw LJ, delivering the judgement of the Court of Criminal Appeal, stated at pages 508 & 680 respectively:

‘In order to justify a conviction there must be, not only a situation which, viewed objectively, was dangerous, but there must also have been some fault on the part of the driver, causing that situation. ‘Fault’ certainly does not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving. Nor does fault necessarily involve moral blame. Thus there is fault if an inexperienced or a naturally poor driver, while straining every nerve to do the right thing, falls below the standard of a competent and careful driver.

Fault involves a failure, a falling below the care or skill of a competent experienced driver, in relation to the manner of the driving and to the relevant circumstances of the case. A fault in that sense, even though it be slight, even though it be a momentary lapse, even though normally no danger would have arisen from it, is sufficient. The fault need not be the sole cause of the dangerous driving. It is enough if it is, looked at sensibly, a cause. Such a fault will often be sufficiently proved as an inference from the very facts of the situation. But if the driver seeks to avoid that inference by proving some special fact, relevant to the question of fault in this sense, he may not be precluded from seeking so to do’ (emphasis added)

A momentary disregard of safety precautions or a momentary act of negligence can amount to dangerous driving, see *R v Parker* (1957) 41 CrAppR 134 at page 135.

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In *R v Ball & Loughlin* (1966) 50 CrAppR 266 Lord Parker LJ, delivering the judgment of the Court, stated at page 270:

‘It is, in the opinion of this court, perfectly clear that what is meant by “driving in a manner dangerous” is the manner of the actual driving [...]. [...] The case of *EVANS* [(1962) 47 CrAppR 62; [1963] 1 QB 42] now set out quite clearly that the test is a purely objective one and that it matters not why the dangerous situation was caused or the dangerous manoeuvre executed.’

See also: *R v Coventry* (1938) 59 CLR 633; [(1938) 12 ALJ 67] at pages 637 – 639; *Karo Gamoga v The State* [1981] PNGLR 443 at pages 451 – 452 & *R v Webb* [1986] 2 QdR 446.

The defendant *must* have regard *not* only to actual, but also to potential danger, crossroads, bends, etc, see *Durnell v Scott* [1939] 1 AllER 183.

The following are the important considerations in determining whether a defendant was driving ‘*dangerously*’:

- The ‘*test*’ to be applied is ‘*objective*’, and *not* ‘*subjective*’;
 - Therefore, the opinion of the defendant whether he/she was driving dangerously is *immaterial*;
 - *The ‘test’ to be applied is whether an ordinary/reasonable person would have thought that the defendant was driving dangerously having regard to all the circumstances of the case including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road in question;*
 - Driving dangerously may involve causal behaviour *and/or* momentary lapses of attention;
 - The danger caused by the driving to the public may be either real *or* potential;
 - To drive dangerously *must* involve some ‘*fault*’ on the part of the defendant which caused the dangerous situation;
 - That ‘*fault*’ of the defendant does *not* need to involve either: [i] deliberate conduct *or* intentionally driving dangerously;
- and
- ‘*Fault*’ involves a failure, a falling below the care or skill of a competent experienced driver, in relation to the manner of the driving and to the relevant circumstances of the case.

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Furthermore, the following regulations as provided for by the *Traffic Regulations* (Ch. 131) should also be considered:

- '*Meeting Or Overtaking Traffic*', see regulation 50.

That regulation states:

- '(1) Every vehicle meeting or being overtaken by other traffic shall be kept as close to the left or nearside of the road as possible.
- (2) Every vehicle overtaking other traffic shall be kept to the right or offside of such traffic.
- (3) Animals which are being led may be passed or overtaken on whichever side is the safer.
- (4) No vehicle shall be driven so as to overtake other traffic unless the driver of the vehicle has a clear and unobstructed view of the road ahead; the driver shall not overtake such traffic unless he sees that the road ahead is clear for a sufficient distance to enable him, after overtaking, to return to his proper side before he encounters any traffic coming from the opposite direction.
- (5) No vehicle shall overtake other traffic when such vehicle is rounding a corner, or at any place where roads intersect or fork, or where a road passes over the brow of a hill or over a hump – backed bridge, or where the driver of the vehicle is unable to see sufficiently far ahead to enable him to overtake with safety.
- (6) Any vehicle meeting another vehicle on a road shall, where necessary to allow safe passage for any reason, slow down, and the driver of an unladen vehicle shall give right of way to any laden vehicle in such circumstances.
- (7) Vehicles ascending any hill shall, where necessary, be given the right of way by oncoming vehicles.
- (8) The driver of any vehicle which is being driven on its offside of the road shall give way to any oncoming traffic.
- (9) Notwithstanding the provisions of this regulation, it shall be lawful for vehicles to overtake in the nearside or left – hand lane and for meeting traffic to pass in their appropriate lane on any road which has been divided into three or more traffic lanes by islands, bollards or markings on the road';

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- ‘*Duty To Keep To The Left*’, see regulation 52.

That regulation states:

‘Save where the contrary is ordered by a police officer in the execution of his duty or by the wording of any traffic sign, drivers of vehicles shall drive to the left side of all roundabouts, street islands, street refuges and unbroken lines on the roads’;

- ‘*Turning Left*’, see regulation 53.

That regulation states:

‘Every vehicle when turning to the left from one road into another road shall keep close to the left side of each such road’;

- ‘*Turning Right*’, see regulation 54.

That regulation states:

‘Every vehicle when turning to the right from one road into another road shall drive round the point of intersection of the centre lines of the two roads or round any island or mark which may have been erected or marked for the guidance of traffic’;

and

- ‘*Travelling Backwards*’, see regulation 55.

That regulation states:

‘No person shall cause a motor vehicle to travel backwards for a greater distance or time than may be requisite for the safety or reasonable convenience of the occupants of that vehicle or of other traffic on the road.’

[9.0] Evidence Of Speed

Excessive speed alone *may* constitute dangerous driving, see *Bracegirdle v Oxley* [1947] KN 349; [1947] 1 AllER 126.

To prove that a defendant drove at a speed dangerous to the public it is necessary for the prosecution to present evidence of a certain speed or range of speeds, either by:

- an observation of the speedometer of the police motor vehicle;
- by an estimation of the speed of the defendant’s motor vehicle, see however, section 41(2) of the *Traffic Act* (Ch. 133);

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or

- an admission by the defendant.

As regards the *accuracy of speedometers* in motor vehicles, it has been held that such technical, if not scientific, instruments are *presumed to function accurately, unless the contrary is shown*, see *Thompson v Kovacs* [1959] ALR 636 & *Peterson v Holmes* [1927] SALR 419.

If it is intended to rely on an estimation of a police officer, the prosecution must lay the basis for such evidence.

Factors which may assist include:

- the types of motor vehicles able to be driven;
 - the length of time being the holder of a driver's license;
- and
- policing experience in the detection of speeding offences.

See also: *Zanker v Modystach* (1990) 54 SASR 183; *Wells v Gill* [1960] SASR 106; *Hogan v Walsh* [1936] SASR 273; *Buckley v Bowes* [1925] VLR 350 & *Kelly v Walsh* [1929] SASR 481.

As regards the offence of '*Speeding*', refer to page **118**.

[10.0] Evidence Of Manner Of Driving

In *R v Ball & Loughlin* (1966) 50 CrAppR 266 Lord Parker LJ, delivering the judgment of the Court, stated at page 270:

'It is, in the opinion of this court, perfectly clear that what is meant by "driving in a manner dangerous" is the manner of the actual driving [...]. [...] The case of *EVANS* [(1962) 47 CrAppR 62; [1963] 1 QB 42] now set out quite clearly that the test is a purely objective one and that it matters not why the dangerous situation was caused or the dangerous manoeuvre executed.'

Minor traffic infringements do *not* amount to 'dangerous driving', unless there is a danger caused to the public, see *R v Jones* [1978] 3 AllER 1098 [(1978) 67 CrAppR 166] at page 1102.

In *R v Robert Millar (Contractors) Ltd & Robert Millar* (1970) 54 CrAppR 158 Fenton Atkinson LJ, delivering the judgment of the Court, stated at page 165:

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'In our view, if a driver is sent out by his employer to drive a heavy vehicle, on a trip extending over some hundreds of miles carrying heavy loads with a dangerously defective front off – side tyre, by an employer who knows that the tyre is dangerous, and there is a serious risk of harm resulting to other road – users, then, if that tyre does burst and thereby causes an accident killing somebody, the employer is guilty of counselling and procuring death by dangerous driving. It is no answer to that to say that the driver of the vehicle at the time was said to be doing his best and was steering the vehicle properly, controlling it as well as he could and so on, and that there would have been no accident but for the bursting of the tyre.

In our view, a man is driving in a manner dangerous to the public if he drives at some speed on the road a vehicle with a tyre which he knows is dangerous and defective and liable to burst at any moment.' (emphasis added)

To prove that a defendant drove in a manner dangerous to the public, the prosecution *must* present evidence which outlines the manner in which the defendant drove the motor vehicle, *including*:

- any distance driven on the wrong side of the road;
 - whether any pedestrians were forced to take evasive action to avoid the defendant's motor vehicle;
 - the speed of the defendant's motor vehicle;
 - whether any other vehicles were overtaken in dangerous situations such as on a blind corner;
 - any failure to use indicators;
 - any failure to use headlamps;
 - any disobedience of traffic signs;
 - any failure to give 'right of way';
 - any intentional collisions with other vehicles or objects;
 - any other offence committed under the *Traffic Regulations* (Ch. 131), including defects to the motor vehicle;
 - any failure to keep a proper look – out;
- and
- any potential danger to the public.

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Where '*actual danger*' to the public has been caused the investigating police officer should:

- record the details as soon as possible after the incident;
- and
- attempt to locate all witnesses and obtain a statement from those persons.

As regards the '*circumstances of the case*', evidence should be given regarding:

- the description of the class of road, eg. Main street, suburban street, etc.;
- the type of road surface;
- the condition of the road surface;
- whether there were any bisecting roads;
- whether there were any official traffic signs or marking on the road;
- whether there was any street lighting along the route, if applicable;
- the characteristics of the road as to whether it was straight, level, curved, etc.;
- visibility limitations as regards for example, dust, smoke, fog, etc.;
- the weather conditions;
- the speed limit on the road;
- the amount of traffic actually on the road;
- and
- the amount of traffic reasonably expected to be on the road at the time in question.

A court may however take '*judicial notice*' of a number of those issues.

A court *may* consider that it would be beneficial to have a '*view*' of the road in question. In *The State v Kevin Daniel Marcellin* (Unrep. N283; 12 December 1980; Papua New Guinea) Narokobi AJ, sitting alone, stated:

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‘[H]aving decided that the view is to be limited to seeing the physical condition of the road and the possible location and position of the vehicle at different times, and in the presence of counsel, I see no objection to taking a view of the scene. Furthermore, defence counsel is at liberty to ask any questions on cross – examination relating to the view.’

A sketch plan can be an important ‘*documentary aid*’ in assisting the court in determining the guilt of a defendant. However, if it intended to outline the direction travelled by the defendant then the plan should be completed by a witness who made the observation of the driving of the defendant. Otherwise, the plan would be based to some extent on ‘*hearsay evidence*’, see *Frank Norman Hiki v R* (Unrep. Criminal Appeal Case No. 9 of 1979; Davis CJ; at page 2).

[11.0] Evidence Of Alcohol

A defendant should be questioned regarding his/her consumption of alcohol in terms of:

- the *type* of alcohol consumed;
- the *volume* of alcohol consumed;
- the time of the *first drink* of alcohol;
- and
- the time of the *last drink* of alcohol, prior to driving the motor vehicle in question.

In *R v Woodward* [1995] 2 CrAppR 388 Lord Taylor CJ, delivering the judgment of the Court of Appeal, stated at pages 392 – 394:

‘The relevance to the offence of evidence that the defendant had taken drink was explained in *McBride* (1961) 45 CrAppR 262, [1962] 2 QB 167. Ashworth J, giving the reserved judgment of the court of five judges said at p. 266 and p. 172 respectively:

“... if a driver is adversely affected by drink, this fact is a circumstance relevant to the issue whether he was driving dangerously. Evidence to this effect is of probative value and is admissible in law. In the application of this principle two further points should be noticed. In the first place, the mere fact that the driver had had drink is not of itself relevant: in order to render evidence as to the drink taken by the driver admissible, such evidence must tend to show the amount of drink taken was such as would adversely affect a driver or, alternatively, that the driver was in fact adversely affected. Second, there remains in court an overriding discretion to exclude such evidence if, in the opinion of the Court, its prejudicial effect outweighs its probative value.”

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That principle was applied in *Thorpe* (1972) 56 CrAppR 293, [1972] 1 WLR 342. At p. 206 and pp. 344, 345, respectively, Lord Widgery, CJ., after quoting the passage cited above, said:

“The principle which is enshrined in that paragraph is quite clearly this. It would be prejudicial and not probative for the prosecution to seek to show merely that the accused had been in a public house on the evening in question or had been seen with a glass of beer in his hand. If evidence of that kind were allowed to be admitted, it might prejudice the mind of the jury and it would have no probative value at all.

What this Court was saying in *Mc Bride* (*supra*) was that such evidence is not admissible unless it goes far enough to show that the quantity of alcohol taken is such that it may have some effect on the way in which the man drives. [...]

Thus, [...], there was no doubt that evidence of a substantial quantity of drink taken was admissible on the issue of whether the defendant was driving dangerously. Mc Bride and Thorpe have not been overruled.

However, section 50(1) of the Criminal Law Act 1977 substituted a new section 1 in the Road Traffic Act 1972. Causing death by dangerous driving was abolished and the new section 1 contained only the offence of causing death by reckless driving. The recklessness necessary to prove that offence was defined in *R v Lawrence* (1981) 73 CrAppR 1, [1982] AC 510.

Lord Diplock at p. 11 and p. 526 respectively articulated the well – known two – limbed test. [...]

[That test is outlined on page **54**.]

In a series of decisions of this Court, evidence that the defendant had been drinking was held to be admissible only in relation to the second limb of Lord Diplock’s test, not in relation to the first. [...] In *Welburn* [(1992) 94 CrAppR 297; [1992] RTR 391], Lord Lane, CJ expressed something less than wholehearted agreement with the authorities he felt bound to follow. He said at p. 300 and p. 394L to 395B respectively:

“The problem in this case can be stated quite simply and that is this: is the question of drink admissible so far as the first part of Lord Diplock’s direction is concerned, or, should it be confined only to the second part of Lord Diplock’s analysis? There is a great deal to be said for either point of view. We are told that there is certainly a large body of academic opinion which would favour the applicability of the drink question to part one of the Diplock direction. That may very well be correct academically. But we are concerned with the law as it stands at the moment, and it seems to us that, whatever arguments there may be in the contrary direction, we are bound by a number of decisions which tend to lay down, and in fact do lay down that the problem of drink is not to be regarded under part one of the Diplock direction, but only under part two.”

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In *Peters* [[1993] RTR 133] this Court held that although *evidence of driving with too much drink does not “of itself” constitute the actus reus of causing death by reckless driving, it may be relevant and therefore admissible to help determine what was the manner of driving where the facts are in issue.*’ (emphasis added) [words in brackets added]

See also: *Karo Gamoga v The State* [1981] PNGLR 443 at pages 451.

To prove that the consumption of alcohol did adversely affect a defendant requires evidence from a doctor who can give ‘opinion evidence’ based on the defendant’s admitted consumption of alcohol prior to the time of the alleged offence.

In *R v Newell* (1948) 32 CrAppR 173 Humphreys J, delivering the judgment of the Court, stated at page 180:

‘Our view is that the evidence of a doctor, whether he be a police surgeon or anyone else, should be accepted, unless the doctor himself shows that it ought not to be, as the evidence of a professional man giving independent expert evidence with the sole desire of assisting the Court.’

See also: *R v Lanfear* [1968] 2 WLR 623; (1968) 52 CrAppR 176; [1968] 2 QB 77; [1968] 1 AllER 683.

A police officer may give ‘*opinion evidence*’ as regards the indicia of the defendant. In *R v Aldridge* (1990) 20 NSWLR 737 the Court held at page 744:

‘The third ground of appeal complains of admission into evidence of the police officer’s opinion that Mrs Ryan was affected by intoxicating liquor at the time when the police were called to her house. Unassisted by authority, and ignoring what has always been permitted in charges of driving under the influence and in personal injury claims, *I would have said that a police officer could give evidence of only the usual indicia upon which an opinion may be founded – smelling of liquor, slurred speech, inability to walk in a straight line, etc – leaving it to the jury (or other tribunal of fact) to draw its own conclusions from their own experience [...].*

The police officer’s opinion was therefore admissible, although it should not have been permitted without first obtaining the factual basis for that purpose.’ (emphasis added)

See also: *R v Davies* [1962] 3 AllER 97; [1962] 1 WLR 1111; (1962) 46 CrAppR 292; *Kennedy v Prestwood* (1988) 7 MVR 561; *Himson Mulas v R* [1970 – 71] PNGLR 82 at page 99; *Blackie v Police* [1966] NZLR 910; *Thomas v Snow* [1962] QWN 7; *Warning v O’Sullivan* [1962] SASR 287 at page 289; *R v Kelly* [1958] VR 412; *R v McKimmie* [1957] VR 93 & *R v Whitby* (1957) 74 WN(NSW) 441.

Therefore, for such ‘*opinion evidence*’ to be admissible police officers *must* give the basis of their opinion based on their own experience in dealing with persons affected by liquor both at work and socially.

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However, in *Amos v Griffiths* (1987) 5 MVR 430 it was held that an admission by a defendant that he/she had too much alcohol to drink was not an adequate substitute for evidence by a police officer that the defendant was visibly affected by alcohol.

[12.0] Cause Death

[12.1] Introduction

The fact that a person dies as a consequence of the driving of a motor vehicle does *not* necessarily mean that the driver was driving either recklessly or dangerously. The driver of such a motor vehicle *must* be driving recklessly or dangerously *prior* to the accident.

In *The State v Kevin Daniel Marcellin* (Unrep. N283; 12 December 1980; Papua New Guinea) Narokobi AJ, sitting alone, stated:

‘Whilst every effort should be made to avoid the temptation to look at death and adduce or infer negligent or dangerous driving, one should not be so cautious that one cannot probe into the quality of driving from the nature of injuries or even death [See *The State v John Koe* [1976] PNGLR 562].’

In *R v Himson Mulas* [1969 – 70] P&NGLR 1 Ollerenshaw J, sitting alone, held at page 5:

‘The plain questions are: Was the accused person driving a motor vehicle on a road dangerously [or recklessly] that is dangerously [or recklessly] towards the other persons who might reasonably be expected to be on or near the road, and, if he were, did he thereby cause the death of another person?’ [words in brackets added]

The reckless or dangerous driving must be the *substantial*, although it need *not* have been the sole, cause of the death, see *R v Curphey* (1957) 41 CrAppR 78 at page 80; *R v Gould* (1963) 47 CrAppR 241; *R v Hennigan* [1971] 3 AllER 133; [1971] RTR 305; (1971) 55 CrAppR 262; *The State v Elias Subang* (No. 2) [1976] PNGLR 179 & *The State v Jim Jobaga Ilivitaro* [1977] PNGLR 249.

In *Kuraba Yangesen of Meremanda v The State* [1978] PNGLR 465 the Supreme Court commented at page 468:

‘That death results as a result of dangerous driving does not alter the quality of the dangerous driving. It only results in a greater maximum sentence. Many dangerous drivers have been caught by police before any harm to them or others was caused at all.’

See also: *The State v Ilivitaro* [1977] PNGLR 249; *The State v Elias Subang* (No. 2) [1976] PNGLR 179; *R v Messulam Wauta* [1973] PNGLR 714 at page 716 & *R v Amos* [1965] QWN 11.

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[12.2] Points To Prove

In order to prove that a person died as a consequence of reckless or dangerous driving, the prosecution *must* prove the following elements:

- The identity of the deceased;
- That he/she died on a certain date. As regards '*Limitation As To Time Of Death*' section 209 of the *Penal Code* (Ch. 26) states (in part):

'A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.'

- That he/she died from certain injuries;
 - That the injuries were suffered as a consequence of the alleged reckless or dangerous driving;
- and
- That the reckless or dangerous driving was a substantial, *not* necessarily sole substantial, cause of the death.

[13.0] Defences

[13.1] Introduction

The onus is on the defendant to '*fairly raise*' the following defences. Upon being fairly raised the onus is on the prosecution to negative such defences '*beyond reasonable doubt*'.

Refer also to the chapter which examines '*Onus Of Proof*' commencing on page 3.

[13.2] Extraordinary Emergency

In *R v Spurge* (1961) 44 CrAppR 191 [[1961] 2 QB 205; [1961] 3 WLR 23; [1961] 2 AllER 88] Salmon LJ, delivering the judgment of the Court, held at page 197:

'This court desires to emphasise that cases in which a mechanical defect can successfully be relied upon as a defence to a charge of dangerous driving must be rare indeed. *This defence has no application where the defect is known to the driver or should have been discovered by him had he exercised reasonable prudence. To drive a motor - car in such circumstances is manifestly dangerous. The essence of the defence is that the danger has been created by a sudden total loss of control in no way due to any fault on the part of the driver.*' (emphasis added)

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In *Migi Barton v The State* (Unrep. SC 213(M); 24 November 1981; Papua New Guinea) Kearney DepCJ and Bredmeyer J, with whom Miles J concurred, stated:

‘In *Smith v R* [[1976] WAR 97] it was stated, adopting and following *R v Spurge* [(1961) 2 QB 205] and *R v Gosney* [1971] 3 ALLER 220]:

“But the offence is not an absolute one; there must be some fault on the part of the driver; accordingly if, for example, a sudden emergency arises from a defect in the vehicle of which the driver was not aware, or from illness or accident of the driver, or from the act of another person, which results in the vehicle being driven with actual or potential danger to the public, then the driver may properly be held not to have been guilty of the offence of dangerous driving.”

[...]

The grabbing of the wheel by the front seat passenger Clara, which made the driving dangerous, constituted the type of “sudden emergency” mentioned in *Smith v R* (supra); on the facts in this case it was an action which no ordinary man would have anticipated or been ready to deal with. The fault principle applies; full allowance must be made for the appellant’s predicament; on the facts as proved in evidence the appellant had to be given the benefit of the doubt that an ordinary person possessing ordinary power of self – control and driving competence and experience could not reasonably have been expected to have acted other than as the appellant, who should accordingly have been acquitted.’

In *Haynes v Swain* [1975] RTR 40 the Court held that if it has been found that the defendant knew or ought to have known of the mechanical defect, he/she *cannot* avail himself/herself of the defence even if the motor vehicle has been subsequently serviced by a garage.

See also: *R v Pius Piane* [1975] PNGLR 52 & *The State v Dela Tami of Yambo* [1977] PNGLR 57.

In *Police v Robertson* (1946) 41 MCR 1 the Court held that while a driver of a motor vehicle whose vision of the road ahead is seriously affected by anything such as a dazzle, glare or fog that person is under a definite obligation to take all steps necessary to avoid a collision with other persons or objects lawfully on the road even though this may involve stopping altogether; the standard of care to be exercised may well vary according to the time and the locality.

To negate a possible defence of sudden sun blindness, evidence should be given as to how the vision of a driver would have been affected along the route when the motor vehicle was being driven recklessly or dangerously. Questions similar to the following should also be asked:

- When and for what distance were you blinded by the sun?;

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- On previous occasions have you encountered similar problems on that particular stretch of road?;
- What steps were necessary on prior occasions?;
- Could you see any traffic approaching prior to being blinded by the sun?;
- Did you reduce speed or try to stop?;
- Were you wearing sunglasses?;
- and
- What was the condition of the windscreen?

See also: *Simpson v Peat* [1952] 2 QB 24; [1952] 1 WLR 469; [1952] 1 AllER 447.

[13.3] Intention

Section 9 of the *Penal Code* (Ch. 26) states (in part):

‘Subject to the express provisions of this Code relating to *negligent acts and omissions*, a person is *not* criminally responsible for *an act or omission which occurs independently of the exercise of his will* [...].’

An act or omission that occurs involuntary and unintentionally, and therefore, independently of the exercise of the will of a defendant, is an act or omission done in a state of ‘*automatism*’. It appears to be roughly equivalent to what a layman might call a ‘blackout’.

In *Broome v Perkins* (1987) 85 CrAppR 321 the defendant was charged with ‘*Driving Without Due Care And Attention*’ and he raised the defence of ‘*automatism*’.

Gildewell J, delivering the judgment of the Queens Bench Divisional Court held at page 332:

‘The question which is posed in the case can be rephrased to ask: “On the evidence, could the justices properly conclude that the defendant was not conscious of what he was doing and that his actions were involuntary and automatic throughout the whole of the five mile journey over which the erratic driving was observed?” If, during a part or parts of that journey, they were satisfied that his actions were voluntary and not automatic, at those times he was driving and clearly the way in which he was driving was such that they should properly have convicted him of driving without due care and attention.

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When driving a motor vehicle, the driver's conscious mind receives signals from his eyes and ears, decides on the appropriate course of action as a result of those signals, and gives directions to the limbs to control the vehicle. When a person's actions are involuntary and automatic his mind is not controlling or directing his limbs.'

That test applies equally to the charges of:

[i] '*Causing Death By Reckless Or Dangerous Driving*', as provided for by section 38 of the *Traffic Act* (Ch. 131);

and

[ii] '*Reckless Or Dangerous Driving*', as provided for by section 39(1) of the *Traffic Act* (Ch. 131).

In *R v Stubbles* [1959] CrimLR 660 the Court held that the defence of '*automatism*' is only available if the driver was suddenly and unexpectedly deprived of all thought and that such state was not connected with any deliberate acts or conduct on his/her part and arose from a cause which a reasonable person would have no reason to think and the driver did not anticipate, would occur.

In *Cooper v McKenna* [1960] QdR 406 the Court held that post – traumatic '*automatism*' can amount to a defence in a dangerous driving charge, but it is a defence which must be closely scrutinised. That Court also stated that 'blackout' is one of the first refuges of a guilty conscience and a popular excuse.

See also: *Hill v Baxter* [1958] 1 AllER 193; (1957) 42 CrAppR 51; [1958] 1 QB 277; [1958] 2 WLR 76; *R v Atkinson* (1970) 55 CrAppR 1; *Jeminez v R* (1992) 66 ALJR 292 & *R v Carter* [1959] VLR 105.

[14.0] Parties To Offences

In *R v Robert Millar (Contractors) Ltd & Robert Millar* (1970) 54 CrAppR 158 Fenton Atkinson LJ, delivering the judgment of the Court, stated at page 165:

'In our view, if a driver is sent out by his employer to drive a heavy vehicle, on a trip extending over some hundreds of miles carrying heavy loads with a dangerously defective front off – side tyre, by an employer who knows that the tyre is dangerous, and there is a serious risk of harm resulting to other road – users, then, if that tyre does burst and thereby causes an accident killing somebody, the employer is guilty of counselling and procuring death by dangerous driving. It is no answer to that to say that the driver of the vehicle at the time was said to be doing his best and was steering the vehicle properly, controlling it as well as he could and so on, and that there would have been no accident but for the bursting of the tyre. *In our view, a man is driving in a manner dangerous to the public if he drives at some speed on the*

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road a vehicle with a tyre which he knows is dangerous and defective and liable to burst at any moment.' (emphasis added)

[15.0] Alternative Charges Or Convictions

[15.1] Causing Death By Reckless Or Dangerous Driving

Section 39(2) of the *Traffic Act* (Ch. 131) states:

'If upon the trial of a person for an offence against section 38 [*'Causing Death By Reckless Or Dangerous Driving'*] of the court is *not* satisfied that he driving was the cause of the death but is satisfied that he is guilty of driving as mentioned in subsection (1) [of section 39 of the *Penal Code* (Ch. 26)], it shall be lawful for the court to convict him of an offence under this section, [to wit '*Reckless Or Dangerous Driving'*].' [words in brackets added]

[15.2] Reckless Or Dangerous Driving

Section 40(2) of the *Traffic Act* (Ch. 131) states:

'Where a person is charged with an offence under section 39 [*'Reckless Or Dangerous Driving'*], and the court is of opinion that the offence is *not* proved, then, at any time during the hearing or immediately thereafter the court may, without prejudice to any other powers possessed by the court, direct or allow a charge for an offence under this section to be preferred forthwith against the person charged and may thereupon proceed with that charge [to wit '*Careless & Inconsiderate Driving'*], so however that such person or his solicitor or counsel shall be informed of the new charge and be given an opportunity, whether by way of cross – examining any witness whose evidence has already been given against the defendant or otherwise, of answering the new charge, and the court shall, if it considers that the defendant is prejudiced in his defence by reason of the new charges being so preferred, adjourn the hearing.' [words in brackets added]

A charge of '*Careless Driving*' as provided for by section 40 of the *Traffic Act* (Ch. 131) should only be preferred at the conclusion of the evidence for the prosecution.

[16.0] Joinder Of Charges

The facts of each particular case determine whether a defendant should be charged with a single charge of '*Reckless or Dangerous Driving*' who during the course of a single journey commits a number of dangerous acts. In that determination a Court will consider the distances driven and the time period between each dangerous act. If the prosecution intends to rely on a single charge involving a number of dangerous acts on different roads then the wording of the charge *must include* the names of such roads.

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In *R v Miller* [1986] 2 QdR 518 Williams J, as a member of the Court of Criminal Appeal, stated at page 532:

‘It may often be just and reasonable for a prosecutor to charge two separate counts of dangerous driving arising from the manner in which a person drove his vehicle at a particular time and place. But it must be remembered, as was approved by this court in *R v Juraszko* [1967] QdR 128, that the one charge of dangerous driving may encompass a number of particulars of driving over a short distance.’

See also: *Whitby v Williams* (1987) 5 MVR 268; *Phillis v Coombe* (1987) 5 MVR 331; *R v Clark* (1986) 4 MVR 245; *Harvey v Lovegrove* (1985) 2 MVR 380; *Horrix v Malam* [1984] RTR 112; *Hayes v Wilson* (1984) 1 MVR 198; *R v Messulam Wauta* [1973] PNGLR 714 & *Ex parte Graham, Re Dowling* [1969] 1 NSWLR 231.

[17.0] Compared With Driving Without Due Care & Attention Or Reasonable Consideration

Whilst the offences of ‘*Reckless Or Dangerous Driving*’ and ‘*Driving Without Due Care And Attention Or Reasonable Consideration*’ are related to a departure of the standard of driving that is required from a reasonable, competent and prudent driver, the difference lies in the degree of departure from that standard.

The offence of ‘*Driving Without Due Care And Attention Or Reasonable Consideration*’ which is examined commencing on page **73** is a ‘*minor departure*’ from that standard, whilst ‘*Reckless Or Dangerous Driving*’ is a ‘*gross departure*’, see *R v Duncan* (1953) 11 SASR 592.

CARELESS OR INCONSIDERATE DRIVING

[1.0] Introduction

This chapter will examine the offence of '*Careless Or Inconsiderate Driving*', as provided for by section 40 of the *Traffic Act* (Ch. 131).

For the purpose of consistency the offences under the *Traffic Act* (Ch. 133) should be interpreted

'in accordance with the *Interpretation and General Provisions Act* and the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith', see section 3 of the *Penal Code* (Ch. 26).

See also the *Road Traffic Act* (1960) (UK), section 3.

Section 75 of the *Traffic Act* (Ch. 131) states (in part):

'Where a person is prosecuted for an offence under any of the sections of this Act relating to respectively [...], to careless driving, [...], he shall not be convicted unless --

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under [such sections] would be considered;
- (b) within fourteen days of the commission of the offence a summons for the offence was served on him; or
- (c) within the said fourteen days a notice of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that --

- (iii) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that –
 - (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or
 - (b) the accused by his own conduct contributed to the failure;

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- (iv) the requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.'

[2.0] Careless Driving

[2.1] Offence

Section 40(1) of the *Traffic Act* (Ch. 131) states:

'If a person drives a motor vehicle on a road without due care and attention is guilty of an offence [...].'

[2.2] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] without due care and attention by [specify the driving of the defendant].'

[2.3] Elements

- A. Defendant
- B. Place
- C. Date
- D. Drive
- E. Motor Vehicle
- F. Road
- G. Without Due Care And Attention

[3.0] Inconsiderate Driving

[3.1] Offence

Section 40(1) of the *Traffic Act* (Ch. 131) states:

'If a person drives a motor vehicle on a road [...] without reasonable consideration for other persons using the road and liable to [...].'

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[3.2] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] without reasonable consideration for other persons using the said road by [specify the driving of the defendant].'

[3.3] Elements

- A. Defendant
- B. Place
- C. Date
- D. Drive
- E. Motor Vehicle
- F. Road
- G. Without Reasonable Consideration For Other Persons Using The Road

[4.0] Drive

The element '*Drive*' is examined on page **53**.

[5.0] Motor Vehicle

The element '*Motor Vehicle*' is examined commencing on page **53**.

[6.0] Road

The element '*Road*' is examined on page **54**.

[7.0] Without Due Care & Attention

[7.1] Introduction

The term '*Without Due Care And Attention*' is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation and General Provisions Act* (Ch. 85).

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In *Idufo'oa v R* [1982] SILR 55 Daly CJ outlined the following 'test' to be applied in order to determine whether a defendant was '*Driving Without Due Care And Attention*' at pages 55 – 56:

'The question for the magistrate was then, have the prosecution made me sure that the appellant departed from the standard of a reasonable, competent and prudent driver in those circumstances?' (emphasis added)

In *McCrone v Riding* [1938] 1 AllER 157 Lord Hewart CJ, delivering the judgment of the Court, held at page 158:

'The words of the section are that it is an offence when a person drives a motor vehicle without due care and attention or without reasonable consideration for other persons using the road.

That standard is an objective standard, impersonal and universal, fixed in relation to the safety of other users of the highway. It is in no way related to the degree of proficiency or degree of experience attained by the individual driver.' (emphasis added)

In *Simpson v Peat* [1952] 2 QB 24 [[1952] 1 WLR 469; [1952] 1 AllER 447] Lord Goddard CJ, delivering the judgment of the Court, stated at pages 27 – 28:

'It is by no means impossible, and indeed must on occasions happen, that a situation of danger arises in which a motorist is involved but it cannot be said that he caused it by driving dangerously, [...], the offence can be committed although no accident takes place; equally because an accident does occur it does not follow that a particular person has driven either dangerously or without due care and attention; but, if he has, it matters not why he did so.

Suppose a driver is confronted with a sudden emergency although no fault of his own; in an endeavour to avert a collision he swerves to his right – it is shown that had he swerved to the left the accident would not have happened; that is being wise after the event and, if the driver was in fact exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not be convicted, even though another and perhaps more highly skilled driver would have acted differently.' (emphasis added)

In determining whether a defendant *departed from the standard of a reasonable, competent and prudent driver in the circumstances* the court will need to examine the circumstances in question.

Therefore, the prosecution should produce evidence of:

- '*manner of driving*';

and

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- ‘speed’,

which are examined commencing on page **59**.

Furthermore, the following regulations as provided for by the *Traffic Regulations* (Ch. 131) should also be considered:

- ‘Meeting Or Overtaking Traffic’, see regulation 50;
- ‘Duty To Keep To The Left’, see regulation 52;
- ‘Turning Left’, see regulation 53;
- ‘Turning Right’, see regulation 54;

and

- ‘Travelling Backwards’, see regulation 55.

In that regard refer to page **58**.

In *Ben Donga v R* (Unrep. Criminal Appeal Case No. 16 of 1994) Palmer J stated at pages 1 – 2:

‘The particulars of the charge read: “Mr Ben Donga on the 14th day of January 1994 at Honiara in the Guadalcanal Province, drove motor vehicle No.8567 on a road without due care and attention.”

The records of the Magistrate’s Court reveal that the accused was unrepresented, and that the charge was read over and explained. What this Court does not know is, what was explained, and how the charge was explained. *The particulars simply stated that the accused drove without due care and attention. The words “due care and attention” are technical terms. Had the accused been represented, then it could possible be acceptable.* However, in the case of this accused, how would he know that what he was being accused of fell below the minimum requirements that the law imposes upon a reasonable, prudent driver? The only way he could understand that is, if it is sufficiently made clear in the particulars of the offence, in what way his driving was careless, or without due care and attention. *As worded, the particulars of the offence are inadequate and therefore bad.*

Magistrates should be cautious in ensuring that there are sufficient particulars in the information to enable him to put the charge to the accused, and if necessary, to explain it to the accused. Where the particulars are inadequate, then the prosecutor should be required to amend the information and insert the necessary details. It is good practice too to ask the accused if he understood the charge before taking his plea.’ (emphasis added)

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See also: *R v Bristol Crown Court; Ex parte Jones; Jones v Chief Constable of Avon & Somerset Constabulary* (1986) 83 CrAppR 109.

[7.2] Minor Traffic Accidents

A defendant is *not* driving ‘without due care and attention’ simply because as a result of a *minor and common error of judgment* a traffic accident occurs.

In *Lajos v Samuels* (1980) 26 SASR 514 Jacobs J, sitting alone, held at page 517:

‘To hold that such a minor and common error of judgment [, referring to bumping into a stationary vehicle behind when attempting to reverse into a parking space,] is sufficient to constitute an offence of driving without due care is, in my view, to make a mockery of the law. *Such a common and minor occurrence in modern congested traffic conditions cannot of itself be said to involve any substantial departure from the standard of care expected of a reasonably competent and skilful driver.* Such a test does not appear to have been considered by the learned Special Magistrate, who was more concerned to find whether or not there had been an “accident” *but the fact of an accident cannot of itself be conclusive* (*Simpson v Peat* [1952] 2 QB 24; *Dayman v Gill* [1941] SASR 208).’ (emphasis added) [words in brackets added]

[7.3] Unexplained Traffic Accidents

An ‘unexplained traffic accident’ is an accident for which the defendant refuses to answer questions and there are no witnesses. Depending on the circumstances, the prosecution may be able to prove that such traffic accidents result from defendants driving ‘without due care and attention’. In such cases, the prosecution *must* rely on ‘*circumstantial evidence*’ to prove that offence beyond reasonable doubt.

As regards ‘*circumstantial evidence*’ the test to be applied is:

‘The guilt of the accused *must* be the *only* rational inference open to the Court to find in the light of the evidence’, see *R v Dudley Pongi* (Unrep. Criminal Case No. 40 of 1999; Muria CJ; at page 22).

Therefore, the prosecution *must* be able to satisfy the court that the only rational inference that the circumstances of the traffic accident enable it to find was that the defendant was driving ‘without due care and attention’.

[8.0] Without Reasonable Consideration

The term ‘*Without Reasonable Consideration*’ is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation and General Provisions Act* (Ch. 85).

CARELESS OR INCONSIDERATE DRIVING

The prosecution has to prove beyond reasonable doubt that the defendant departed from the standard of a reasonable, competent and prudent driver in all the circumstances of the case which is an 'objective' test.

In *McCrone v Riding* [1938] 1 AllER 157 Lord Hewart CJ, delivering the judgment of the Court, held at page 158:

'The words of the section are that it is an offence when a person drives a motor vehicle without due care and attention or without reasonable consideration for other persons using the road.

That standard is an objective standard, impersonal and universal, fixed in relation to the safety of other users of the highway. It is in no way related to the degree of proficiency or degree of experience attained by the individual driver.' (emphasis added)

Regulation 51 of the *Traffic Regulations* (Ch. 131) states:

'Where, for any reason, any vehicle is proceeding at a low rate of speed which is causing obstruction to other traffic, the driver of such vehicle shall keep close to his nearside and permit other vehicles to overtake him.'

In *Dilkes v Bowman Shaw* [1981] RTR 4 the Court held that an actual road user *must* be inconvenienced by the driving of the defendant.

However, a road user *cannot* be inconvenienced if the defendant is complying with the provisions of the *Traffic Act* (Ch. No. 131) and the *Traffic Regulations* (Ch. 131).

[9.0] Defences

In *Broome v Perkins* (1987) 85 CrAppR 321 the defendant was charged with '*Driving Without Due Care And Attention*' and he raised the defence of '*Automatism*'.

Gildewell J, delivering the judgment of the Queens Bench Divisional Court held at page 332:

'The question which is posed in the case can be rephrased to ask: "On the evidence, could the justices properly conclude that the defendant was not conscious of what he was doing and that his actions were involuntary and automatic throughout the whole of the five mile journey over which the erratic driving was observed?"

If, during a part or parts of that journey, they were satisfied that his actions were voluntary and not automatic, at those times he was driving and clearly the way in which he was driving was such that they should properly have convicted him of driving without due care and attention.

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When driving a motor vehicle, the driver's conscious mind receives signals from his eyes and ears, decides on the appropriate course of action as a result of those signals, and gives directions to the limbs to control the vehicle. When a person's actions are involuntary and automatic his mind is not controlling or directing his limbs.'

The law in relation to other defences which may be raised in respect of a charge under section 40 of the *Traffic Act* (Ch. 131) is examined commencing on page **67**.

[10.0] Disqualification Of Drivers' Licenses

As regards the '*Disqualification Of Drivers' Licenses*', refer to page **133**.

[11.0] Related Offences

The following offences are related to the offence of '*Driving Without Due Care & Attention Or Inconsiderate Driving*':

- '*Reckless Or Dangerous Driving*', as provided for by section 39(1) of the *Traffic Act* (Ch. 133). Those offences are examined commencing on page **48**;
- '*Careless Or Inconsiderate Cycling*', as provided for by section 50 of the *Traffic Act* (Ch. 133).

That section states:

'If a person rides a bicycle or tricycle, not being a motor vehicle, on a road without due care and attention, or without reasonable consideration for other persons using the road, he shall be guilty of an offence [...].'

The wording of the charge for this offence is as follows:

'did ride a [bicycle **or** tricycle] not being a motor vehicle on a road namely [specify the name of the road] without [due care and attention **or** without reasonable consideration for other persons using the road] by [specify the riding of the (bicycle **or** tricycle)] on a road namely [specify the name of the road].'

and

- '*Driving Whilst Not In Full Control Or View*', as provided for by section 56(3) of the *Traffic Act* (Ch. 131).

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That section states:

‘No person driving a motor vehicle on a road shall be in such a position that he cannot control the same or obtain a full view of the road and traffic ahead.’

The wording of the charge for this offence is as follows:

‘did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] in such a position that (he/she) could not [control the said motor vehicle **or** obtain a full view of the road and traffic ahead].’

[12.0] Compared With Reckless Or Dangerous Driving

Whilst the offences of ‘*Driving Without Due Care And Attention Or Reasonable Consideration*’ and ‘*Reckless Or Dangerous Driving*’ are related to a departure of the standard of driving that is required from a reasonable, competent and prudent driver, the difference lies in the degree of departure from that standard.

The offence of ‘*Reckless Or Dangerous Driving*’ which is examined commencing on page **48** is a ‘*gross departure*’ from that standard, whilst ‘*Driving Without Due Care And Attention Or Reasonable Consideration*’ is a ‘*minor departure*’, see *R v Duncan* (1953) 11 SASR 592.

TAKING VEHICLES WITHOUT AUTHORITY

[1.0] Introduction

This chapter will examine the offence of '*Taking Vehicles Without Authority*', as provided for by section 59 of the *Traffic Act* (Ch. 131).

That section is almost identical with section 217 of the *Road Traffic Act* 1960 (UK).

For the purpose of consistency the offences under the *Traffic Act* (Ch. 133) should be interpreted

'in accordance with the *Interpretation and General Provisions Act* and the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith', see section 3 of the *Penal Code* (Ch. 26).

In *R v Flower* (1956) 40 CrAppR 189 Lord Goddard CJ stated at page 192:

'I hope that the police and those responsible for prosecutions will remember that it is still open to charge an offender with stealing petrol in such circumstances.'

A defendant should *not* be charged with stealing the same vehicle, see *R v Gibbs* (1959) 44 CrAppR 77.

[2.0] Offence

Section 59(1) of the *Traffic Act* (Ch. 131) states:

'A person who takes and drives away a vehicle without having either the consent of the owner thereof or other lawful authority shall be liable [...].'

[3.0] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did take and drive away a vehicle to wit a [specify the vehicle] without having either the consent of the owner thereof namely [specify the name of the owner] or other lawful authority.'

[4.0] Elements

- A. Defendant
- B. Place
- C. Date

TAKING VEHICLES WITHOUT AUTHORITY

- D. Take
- E. Drive Away
- F. Vehicle
- G. Without Having:
 - [i] Consent Of The Owner; or
 - [ii] Other Lawful Authority

[5.0] Take & Drive Away

The term '*Take*' is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

The '*natural and ordinary*' meaning of that term in the context of this section would mean to remove without the consent of the owner or other lawful authority.

The term '*Drive*' is examined on page **53**.

If an employee without his/her employer's permission takes and drives away a vehicle owned by the employer after working hours for his/her own purposes he/she would be guilty of '*taking*' the vehicle within the meaning of section 59(1) of the *Traffic Act* (Ch. 131), see *R v Wibberley* [1966] 2 QB 214; [1965] 3 AllER 718; (1965) 50 CrAppR 51; [1966] 2 QB 214.

See also: *R v Cook* (1964) 48 CrAppR 98; *Mowe v Perraton* [1952] 1 AllER 423; (1952) 35 CrAppR 194; *Shimmell v Fisher & others* (1951) 35 CrAppR 100; *R v Pearce* [1973] CrimLR 321; *R v Miller* [1976] CrimLR 147 & *R v Diggin* [1981] RTR 83; (1981) 72 CrAppR 204; [1980] CrimLR 656.

[6.0] Vehicle

The term '*Vehicle*' is defined in section 2 of the *Traffic Act* (Ch. 131) as *including*:

'a motor vehicle, a trailer and any other conveyance used on the road.'

[7.0] Question Of Consent

The onus is on the defendant to prove on the '*balance of probabilities*' that he/she had either:

- the consent of the owner;
- or

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- other lawful authority,

to take and drive away the vehicle in question.

The law relating to '*Negative Averments*' is examined commencing on page **3**.

Section 59(2) of the *Traffic Act* (Ch. 131) states:

‘If on proceedings under this section the court is satisfied that the accused acted in the reasonable belief that he had lawful authority, or in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked thereof, the accused shall not be liable to be convicted of the offence.’

In *R v Phillips & McGill* (1970) 54 CrAppR 300 the Court of Appeal considered circumstances in which the defendant McGill had been given permission by the owner of a motor vehicle to take and use it for a limited purpose. However, rather than returning it upon completion he used it for his purpose on the belief that the owner would consent to such use.

Fenton Atkinson LJ, delivering the judgment of the Court, stated at pages 303 – 304:

‘The learned Common Sergeant put it to the jury in this way:

“The allegation against him is that having lawfully borrowed the car with Mr. Larking’s consent for a particular purpose and for a particular purpose only, he” – referring there, of course, to Mc Gill – “thereafter did not return the car, and if that is the position, then as from the time he decided not to return the car and drove it off on his own business and after having taken his wife to Victoria Station, or rather brought her back again because she missed the train, as from then, as a matter of law, and common sense, if he did not have Mr. Larking’s permission, he took it and drove it away, and it is that subsequent taking and driving that the Crown allege constitutes the offence in this matter.”

[...]

In our view, the direction of the learned Common Sergeant was perfectly proper and accurate.’

If the consent to use a motor vehicle was obtained by intimidation this would be no ‘consent’ in law, see *R v Hogden* [1962] CrimLR 563.

See also: *R v Cameron* [1990] 2 QdR 264; (1990) 46 ACrimR 329; *Nabo Tiambo v Gideon Lari* [1979] PNGLR 525 & *Bulage Maule v Meana* [1969 – 70] P&NGLR 280.

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[8.0] Liability Of Passengers

The mere fact that a person enters a vehicle which had been taken without the consent of the owner and being driven, does *not* constitute the offence under section 59(1) of the *Traffic Act* (Ch. 131). There *must* also be evidence that the passenger was a 'party' to the original taking, even though he/she was not present when the vehicle was initially taken, see *R v Stally* (1959) 43 CrAppR 5.

See also: *R v Bogacki & others* [1973] 2 WLR 937; [1973] 1 QB 832; [1973] 2 AllER 864; [1973] RTR 384; [1973] CrimLR 385; (1973) 57 CrAppR 593 at page 598 & *R v Phillips & McGill* (1970) 54 CrAppR 300.

[9.0] Alternative Conviction

Section 59(3) of the *Traffic Act* (Ch. 131) states:

'If on the trial of a charge of stealing a vehicle the court is of the opinion that the defendant was not guilty of stealing the vehicle but was guilty of an offence under this section, the court may find him guilty of an offence under this section and thereupon he shall be liable to be punished accordingly.'

[10.0] Disqualification Of Drivers Licenses

As regards '*Disqualification Of Drivers' Licenses*', refer to page **133**.

[11.0] Related Offences

The following offences are related to the offence of '*Take & Drive Away*':

- '*Unlawful Use Of Animal Or Vessel*', as provided for by section 292 of the *Penal Code* (Ch. 26).

That section states:

'Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal, or any vessel, is guilty of a misdemeanour [...].'

The wording of the charge for this offence is as follows:

'unlawfully and without colour of right but not so as to be guilty of stealing did [take **or** convert to ([his/her] own use **or** the use of a person namely [specify the name of this person])] a [(draught **or** riding) animal **or** vessel] the property of [specify the name of the complainant]';

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and

- ‘*Tamper With Motor Vehicle*’, as provided by section 60 of the *Traffic Act* (Ch. 131).

That section states:

‘Any person who without lawful authority or reasonable cause tampers with the brake or other part of the mechanism of any motor vehicle shall be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did without lawful authority or reasonable cause tamper with [the brake **or** a part of the mechanism to wit (describe mechanism)] of a motor vehicle to wit a [specify the motor vehicle].’

UNFIT TO DRIVE

[1.0] Introduction

This chapter will examine the offences of:

- '*Driving When Under The Influence Of Drinks Or Drugs*';
- and
- '*Being In Charge When Under The Influence Of Drinks Or Drugs*',

as provided for by section 43 of the *Traffic Act* (Ch. 131).

For the purpose of consistency the offences under the *Traffic Act* (Ch. 133) should be interpreted

'in accordance with the *Interpretation and General Provisions Act* and the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith', see section 3 of the *Penal Code* (Ch. 26).

See section 6 of the *Road Traffic Act* 1960 (UK).

There is no provision in the *Traffic Act* (Ch. 131) allowing for the use of either roadside breath tests or a breathalyser. Even if administered with consent, the *Traffic Act* does not recognise the reading that could be obtained.

[2.0] Unfit To Drive

[2.1] Offence

Section 43(1) of the *Traffic Act* (Ch. 131) states (in part):

'A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drinks or drugs [...].'

[2.2] Wording Of Charge

'[Name of Defendant] at [Place] on [Date] did [drive **or** attempt to drive] a motor vehicle to wit a [specify the motor vehicle] on a [road namely (specify the name of the road) **or** public place to wit (specify the public place)] whilst being unfit to drive through drink or drugs.'

A conviction for driving whilst being unfit to drive through drink or drugs is *not* bad for duplicity, see *Thomson v Knights* [1947] 1 AllER 112; [1947] KB 336.

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The law relating to '*Duplicity*' is examined on page 11.

[2.3] Elements

- A. Defendant
- B. Place
- C. Date
- D. [i] Drive; or
[ii] Attempt To Drive
- E. Motor Vehicle
- F. [i] Road; or
[ii] Public Place
- G. Whilst Being Unfit To Drive Through Drink Or Drugs

[3.0] In Charge

[3.1] Offence

Section 43(2) of the *Traffic Act* (Ch. 131) states:

‘A person who, when in charge of a motor vehicle which is on a road or other public place (but not driving the vehicle) is unfit to drive through drink or drugs [...].’

[3.2] Wording Of Charge

‘[Name of Defendant] at [Place] on [Date] was in charge of a motor vehicle to wit a [specify the motor vehicle] which was on a [road namely (specify the name of the road) or public place to wit (specify the public place)] whilst being unfit to drive through drink or drugs.’

[3.3] Elements

- A. Defendant
- B. Place
- C. Date

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- D. In Charge
- E. Motor Vehicle
- F. [i] Road; or
[ii] Public Place
- G. Whilst Being Unfit To Drive Through Drink Or Drugs

[4.0] Drive

The element '*Drive*' is examined on page **53**.

[5.0] Attempt To Drive

The term '*Attempt To Drive*' is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

The '*natural and ordinary*' meaning of that term in the context of this section would *include* sitting in the driver's seat and

- endeavouring to start the motor vehicle;
- try to put it the motor vehicle in gear;
- or
- accelerating the engine of the motor vehicle in order to try to make it go forward, see *R v Farrance* (1977) 67 CrAppR 136.

In *R v Cook* (1964) 48 CrAppR 98 Lord Parker CJ, delivering the judgment of the Court, stated at pages 103 –104:

'It is unnecessary to go through the many cases which draw a distinction between what one might call an act preparatory and an act constituting the attempt. So far as this case is concerned, we are quite clear that it is impossible to say that the getting into the driving seat and the passenger seat of this vehicle by Howe and the appellant, respectively, with the clear intention of taking and driving it away, when the full offence would be constituted in a minute, as the appellant said, did not constitute an attempt.

The nearest authority dealing with the taking and driving away and stealing of a motor – vehicle is an Irish case, *PRENDERGAST V PORTER* [1961] IrJurR 15. There a defendant had attempted to start the car with the handle and twice tried to start it with the handle, then sat in the driver's seat, but failed to start it. It was argued that all that he had done was to attempt to start it, and that he had never got

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to the stage of attempting to drive it. The court said that “although the process of putting a car in motion by driving involves several steps, yet in the ordinary process these steps are so intimately connected as to occupy a matter of seconds and constitute a practically instantaneous succession of semi – automatic movements. In the instant case the defendant attempted to begin this succession and he would have completed the act of driving, had the car started.”

See also: *McNeall v Croker* (No. 2) (1939) 56 WN(NSW) 149; *Kelly v Hogan* [1982] RTR 352 & *Harman v Wardrop* [1971] RTR 127.

[6.0] In Charge

The term ‘*In Charge*’ is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

In *Director of Public Prosecutions v Watkins* (1989) 89 CrAppR 112 Taylor LJ with whom Henry J concurred, stated at pages 117 – 118:

‘[There is] no hard and fast all – embracing test [that] can be propounded as to the meaning of the phrase “in charge”.

Broadly there are two distinct classes of case. (1) If the defendant is the owner or lawful possessor of the vehicle or has recently driven it, he will have been in charge of it, and the question for the Court will be whether he is still in charge or whether he has relinquished his charge. That is the class to which the *Haines v Roberts* rule was directed. Usually such a defendant will be *prima facie* in charge unless he has put the vehicle in some else’s charge. However he would not be so if in all the circumstances he has ceased to be in actual control and there is no realistic possibility of his resuming actual control while unfit: eg. if he is at home in bed for the night, if he is a great distance from the car or if it is taken by another.

(2) If the defendant is not the owner, the lawful possessor or recent driver but is sitting in the vehicle or is otherwise involved with it, the question for the Court is [...] whether he has assumed being in charge of it. In this class of case the defendant will be in charge if, in the circumstances, including his position, his intentions and his actions, he may be expected imminently to assume control. Usually this will involve his having gained entry to the car and evinced an intention to take control of it. But gaining entry may not be necessary if he has manifested that intention some other way, eg. by stealing the keys of a car in circumstances which show he means presently to drive it.

The circumstances to be taken into account will vary infinitely, but the following will be usually relevant:

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- (i) Whether and where he is in the vehicle or how far he is from it.
- (ii) What he is doing at the relevant time.
- (iii) Whether he is in possession of a key that fits the ignition.
- (iv) Whether there is evidence of an intention to take or assert control of the car by driving or otherwise.
- (v) Whether any other person is in, at or near the vehicle and if so, the like particulars in respect of that person.

It will be for the Court to consider all the above factors with any others which may be relevant and reach its decision as a question of fact and degree.’ [words in brackets added]

Section 43(2) of the *Traffic Act* (Ch. 131) states:

‘A person is deemed for the purposes of this subsection *not* to have been in charge of a motor vehicle *if he proves* –

- (i) that at the material time the circumstances were such that there was no likelihood of his driving the vehicle so long as he remained unfit to drive through drink or drugs; and
- (ii) that between his becoming unfit to drive as aforesaid and the material time he had not driven the vehicle on a road or other public place.’ (emphasis added)

The onus is on the defendant to prove that defence on the ‘*balance of probabilities*’.

Refer also to the law relating to ‘*Negative Averments*’ commencing on page **3**.

[7.0] Motor Vehicle

The element ‘*Motor Vehicle*’ is examined commencing on page **53**.

[8.0] Road

The element ‘*Road*’ is examined on page **54**.

[9.0] Public Place

Whilst the term ‘*Public Place*’ is *not* defined in the *Traffic Act* (Ch. 131), it is defined in section 16 of the *Interpretation & General Provisions Act* (Ch. 85) as *including*:

‘every place to which the public are entitled or permitted to have access whether on payment or otherwise’.

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In *R v Waters* (1963) 47 CrAppR 149 Lord Parker CJ, delivering the judgment of the Court, held at page 154:

‘It seems to this court that the question is largely a matter of degree and fact. If only a restricted class of person is permitted to have access or invited to have access, then clearly the case would fall on the side of the line of it being a private place. If, on the other hand, only a restricted class is excluded, then it would fall on the side of the line of it being a public place.’

See also: *Clarke v Kato & others* [1997] 1 WLR 208; [1998] 1 WLR 1647; *Ling Ainui v Luke Ouki* [1977] PNGLR 11 at page 12; *Hansen v Appo, Ex parte Appo* [1974] QdR 259; *O'Mara v Lowe, Ex parte O'Mara* [1971] QWN 34 & *Schubert v Lee* (1946) 71 CLR 589.

[10.0] Unfit To Drive

The term ‘*Unfit To Drive*’ is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

Section 43(5) of the *Traffic Act* (Ch. 131) states:

‘For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.’

In *R v Leonard Boaz* (Unrep. Criminal Review Case No. 45 of 1996) Palmer J stated at page 4:

‘In the review hearing before this Court, learned Counsel for the accused stated that the accused had told him that he was going to plead guilty as he had taken some alcohol. The offence he had been charged with however, is not merely for taking alcohol, but that he was *unfit* to drive as a result. There are two different things involved, one is the taking of alcohol, and the other is the ability to drive as a normal driver. A person may have taken one or two cans of beer, and still be able to drive normally. Another person on the other hand, may not be in a fit position to drive. The test as set out by the learned Author, G.S. Wilkinson in *Road Traffic Offences*, at page 100 is that, “*his ability to drive properly is for the time being impaired*”, through drink or drugs. He also points out that this can be proven by evidence that a car was being driven erratically or that an accident occurred at a spot where there was no hazard for a normal driver.’

See also: *R v Hawkes* (1931) 22 CrAppR 172.

A police officer may give ‘*opinion evidence*’ as regards the indicia of the defendant.

In *Himson Mulus v R* [1969 – 70] PNGLR 82 Frost J stated at page 99 that ‘no expert qualification is required for a witness to give evidence as to the effect of alcohol upon a person’.

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In *R v Aldridge* (1990) 20 NSWLR 737 the Court held at page 744:

'The third ground of appeal complains of admission into evidence of the police officer's opinion that Mrs Ryan was affected by intoxicating liquor at the time when the police were called to her house. Unassisted by authority, and ignoring what has always been permitted in charges of driving under the influence and in personal injury claims, I would have said that a police officer could give evidence of only the usual indicia upon which an opinion may be founded – smelling of liquor, slurred speech, inability to walk in a straight line, etc – leaving it to the jury (or other tribunal of fact) to draw its own conclusions from their own experience [...].

The police officer's opinion was therefore admissible, although it should not have been permitted without first obtaining the factual basis for that purpose.' (emphasis added)

Whilst such evidence is admissible, an opinion by a lay person as to whether a defendant is '*unfit to drive*' is *inadmissible*, see *R v Davies* [1962] 1 WLR 1111; (1962) 46 CrAppR 292; [1962] 3 AllER 97.

See also: *Kennedy v Prestwood* (1988) 7 MVR 561; *Himson Mulas v R* [1970 – 71] PNGLR 82 at page 99; *Blackie v Police* [1966] NZLR 910; *Thomas v Snow* [1962] QWN 7; *Warning v O'Sullivan* [1962] SASR 287 at page 289; *R v Kelly* [1958] VR 412; *R v McKimmie* [1957] VR 93 & *R v Whitby* (1957) 74 WN(NSW) 441.

Therefore, for such '*opinion evidence*' to be admissible police officers *must* give the basis of their opinion based on their own experience in dealing with persons affected by liquor both at work and socially.

However, in *Amos v Griffiths* (1987) 5 MVR 430 it was held that an admission by a defendant that he/she had too much alcohol to drink was not an adequate substitute for evidence by a police officer that the defendant was visibly affected by alcohol.

In *Billy Gatu v R* (Unrep. Criminal Case No. 93 of 1993) Palmer J stated at pages 6 – 7:

'The evidence adduced in the Magistrate's Court indicated clearly that the line walking test was used to determine whether the accused was in a fit state to drive or not.

I note that there is no legal basis for the application of such a test. I do however observe that such a test had been used it seems as a standard practice by police for sometime.

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I accept that the police do not have a police surgeon, or a medical doctor, that is attached on a permanent basis to the Police Department, and who can be called upon in such instances to carry out a medical examination on the suspect, when required. I also do note that previously, such persons would normally have been taken to the Central Hospital, for examination by a doctor or nurse, but that this practice seems to have been discontinued for some reason or other. Perhaps, it was the doctors and nurses who have refused such requests for fear of being physically assaulted by such drunken suspects.

I accept that the police are therefore in a very difficult position in respect of carrying out any recognised tests or examination on such suspects. I do not know how the test applied in this case emerged as a practice adopted by the police, but it would seem to have its origins from the usual medical examinations that are normally performed by medical doctors.

One such good example of this is contained in the book titled 'Road Traffic Offences' by G.S. Wilkins, 4th Edition 1963 at page 394 – 399, and marked Appendix II. This is a model scheme of Medical Examination drawn up by the British Medical Association and published in 1958, as a guide for an examining doctor to use. The requirements imposed are very clear and precise, and when contrasted with the test applied by the police officers, that test I must say, fell well below any minimum standard of acceptability.

One of the sub – headings in this model scheme is headed 'gait', and it is interesting to note that the line walking test applied by the police officers came under this subheading. I quote:

"The examinee should be asked to walk across the room and the examiner should note:

- (a) Manner of walking: is it straight, irregular, over – precise, staggering, reeling or with feet wide apart?
- (b) Reaction time to a direction to turn: does the examinee turn at once or continue for one or two paces before obeying?
- (c) Manner of turning: does the examinee keep his balance, lurch forward, or reel to one side? Does he correct any mistake in a normal or an exaggerated way?

It is undesirable to ask the examinee to walk along a straight line drawn on the floor or along a carpet edge.'

The first obvious point can be noted from the above quotation is that, the test applied by the police officers was described as 'undesirable'.

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Secondly, such a medical examination is carried out only with the consent of the examinee. Thirdly, the walking test stood out as a very crude test; so crude in fact to be virtually unreliable, and accordingly should have been excluded outright. But even if it is to be admitted, its evidential value with respect would be so negligible to be of any significance.' (emphasis added)

Any medical examination of a defendant to determine 'unfitness to drive' must be conducted with the consent of the defendant as there is no legal basis to require a defendant to undertake such an examination.

See also: '*Halsbury's Statutes of England*', 3rd ed., Ch. 28, page 232.

If defendant is examined for the purpose of determining whether he/she was suffering from an illness or disability and consents to the examination on that basis, the doctor *cannot* be called to give evidence as to his/her opinion regarding the fitness of the defendant to drive, see *R v Payne* (1963) 47 CrAppR 122; [1963] 1 AllER 848; [1963] 1 WLR 637 & *R v Court* [1962] CrimLR 697.

[11.0] Drink

The term '*Drink*' is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

In *Armstrong v Clark* (1957) 41 CrAppR 56 [[1957] 2 QB 391; [1957] 2 WLR 400; [1957] 1 AllER 433] Lord Goddard CJ, with whom Cassels & Lynskey JJ concurred, commented at page 59:

'In my opinion, drink means alcoholic drink.'

[12.0] Drug

The term '*Drug*' is *not* defined in the *Traffic Act* (Ch. 131) or the *Interpretation & General Provisions Act* (Ch. 85).

In *Bradford v Wilson* (1978) 84 CrAppR 77 Robert Goff LJ, delivering the judgment of the Court, stated at page 82:

'Accordingly, adopting a common sense approach, I would say, without attempting to give a definition, that, as a general rule, a substance which is taken into the human body by whatever means, for example, by inhalation, or by injection, or by mouth – which does not fall within the description "drink" (because that is specifically mentioned in the section) [, referring to section 5(2) of the *Road Traffic Act* 1972 (UK),] and which is not taken as a food, but which does affect the control of the

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human body, may be regarded as a drug for the purposes of this section. A particular example of such a substance is one which has a narcotic effect on the human body. That provides, I hope, some guidance as to what can properly be regarded as a drug for these purposes.' [words in brackets added]

[13.0] Disqualification Of Driver's License

As regards the '*Disqualification Of Drivers' Licenses*', refer to page **133**.

[14.0] Related Offence

The following offence is related to the offence of '*Driving Whilst Unfit To Drive*':

- '*Cycling When Under The Influence Of Drink Or Drugs*', as provided for by section 51 of the *Traffic Act* (Ch. 131).

That section states (in part):

- '(1) A person who, when riding a bicycle or tricycle, not being a motor vehicle, on a road or other public place, is unfit to ride through drink or drugs shall be guilty of an offence [...].

[...]

- (3) For the purposes of this section, a person shall be taken to be unfit to ride if his ability to ride properly is for the time being impaired.'

The wording of the charge for this offence is as follows:

'did ride a [bicycle **or** tricycle] not being a motor vehicle on a [road namely (specify the name of the road) **or** public place to wit (specify the public place)] whilst being unfit to ride through drink or drugs.'

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[1.0] Weight As Specified By Regulation

Section 44(2) of the *Traffic Act* (Ch. 131) states:

‘No motor vehicle the weight [...] of which *laden* or *unladen* exceeds the maximum weight [...] provided for such vehicles by this Act shall be used on a road.’
(emphasis added)

The term ‘*laden weight*’ of a vehicle ‘*means* the weight of the vehicle and its load when the vehicle is stationary and ready for the road, and includes the weight of the driver and of any other person carried for the time being’, see regulation 2 of the *Traffic Regulations* (Ch. 131).

The term ‘*unladen weight*’ of a vehicle ‘*means* the weight of a vehicle when unladen, inclusive of the weight of the body and all parts (the heavier being taken when alternative bodies or parts are used) which are necessary to or ordinarily used in the vehicle when used on a road’, see regulation 2 of the *Traffic Regulations* (Ch. 131).

Section 46(1) of the *Traffic Act* (Ch. 131) states:

‘Any person who drives or uses or causes or permits to be used on a road a vehicle in contravention of the provisions of section 44 [...] shall be guilty of an offence [...]’

The wording of the charge for this offence is as follows:

‘did [(drive or use) or (cause or permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 44 of the *Traffic Act* (Ch. 131) because the said vehicle which was [laden or unladen] weighed [specify the weight of the vehicle] and that weight exceeded the maximum weight as provided for such vehicle as specified in Regulation 46 of the *Traffic Regulation* (Ch. 131) to wit [specify the maximum weight permitted].’

The license of the vehicle may be suspended, subject to section 46(3). As regards ‘*Vehicle License/Registration Generally*’, refer to page **126**.

Regulation 46 of the *Traffic Regulations* (Ch. 131) states (in part):

‘*Subject to the provision of section 45 of the Act*, the following provisions shall apply to any vehicle used on a road –

- (a) the maximum weight of any *vehicle laden or unladen* [, as defined in regulation 2 of the *Traffic Regulation* (Ch. 131),] shall not exceed 68,000lb;
- (b) the maximum weight of any *vehicle laden or unladen* shall not exceed –
 - (i) on its most heavily loaded wheel 7,000lb
 - (ii) on its most heavily loaded axle 17,000lb

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- (iii) on its most heavily loaded tandem axle group, that is to say, a group whereof the two axles are not less than 40 nor more than 84 inches apart 32,000lb
- (c) not more than three – quarters of the *laden weight* [, as defined in regulation 2 of the *Traffic Regulation* (Ch. 131),] of any motor vehicle (other than a motor cycle) or trailer shall be transmitted to the road surface by any two wheels of the vehicle;
- (d) each person apparently over the age of sixteen years, and every two persons apparently of or under that age, shall be deemed to weigh 140lb when carried on a vehicle.

Provided that the highway authority may, from time to time, in its discretion, dispense with any or all of the provisions of this regulation in respect of any particular vehicle, or class of vehicles, or in respect of any particular journey or series of journeys to be performed on a road by such vehicle or class of vehicles.’ (emphasis added)

Section 46(2) of the *Traffic Act* (Ch. 131) states:

‘For the purpose of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.’

It is recommended that a defendant who commits this offence should be prosecuted under section 46 of the *Traffic Act* (Ch. 131), rather than regulations 46 and 49 of the *Traffic Regulations* (Ch. 131). Regulation 49 creates the offence because it specifies the penalty.

Regulation 3 of the *Traffic Regulations* (Ch. 131) states:

‘Where any act or omission is an offence under the Act and these Regulations, nothing in these Regulations shall be deemed to affect the liability of any person to be prosecuted under the Act:

Provided that no person shall be prosecuted twice for the same act or omission.’

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[2.0] Weight As Specified By Manufacturer Or Inspector

Section 45 of the *Traffic Act* (Ch. 131) states (in part):

- '(1) No vehicle shall be used on a road with a load greater than the load specified by the manufacturer of the chassis of the vehicle or than the load capacity determined by an *inspector* under this Act.

[...]

- (3) For the purpose of this section, persons travelling on a vehicle shall be deemed to be part of the load.' (emphasis added)

An inspector is a person appointed to be an '*inspector of vehicles*' under section 4(3) of the *Traffic Act* (Ch. 131), see section 2 of the Act.

Section 46(1) of the *Traffic Act* (Ch. 131) states:

'Any person who drives or uses or causes or permits to be used on a road a vehicle in contravention of the provisions of section [...] 45 shall be guilty of an offence [...].'

The wording of the charge for this offence is as follows:

'did [(drive or use) or (cause or permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 45 of the *Traffic Act* (Ch. 131) because the said vehicle weighed [specify the weight of the vehicle] and that weight exceeded the maximum weight:

- as specified by the manufacturer of the chassis of the said vehicle to wit [specify the maximum weight permitted];

or

- as determined by an inspector under the *Traffic Act* (Ch. 131) to wit [specify the maximum weight permitted].'

The license of the vehicle may be suspended, subject to section 46(3). As regards '*Vehicle License/Registration Generally*', refer to page **126**.

Section 46(2) of the *Traffic Act* (Ch. 131) states:

'For the purpose of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.'

OVERLOADING

[3.0] Proof Of Weight

In order to prove these offences the prosecution must be able to '*prove beyond reasonable doubt*' that the weight of the vehicle in question exceeded the prescribed weight.

It would be impossible to do so without the proper weighing equipment.

EXCESSIVE DIMENSIONS

Section 44(2) of the *Traffic Act* (Ch. 131) states:

'No motor vehicle the [...] dimensions of which laden or unladen exceeds the maximum [...] dimensions provided for such vehicles by this Act shall be used on a road.'

Regulation 46 of the *Traffic Regulations* (Ch. 131) states (in part):

'Subject to the provision of section 45 of the Act, the following provisions shall apply to any vehicle used on a road –

- (e)
 - (i) the overall width of any vehicle (including for the purposes of this paragraph the total distance by which any load projects beyond the overall width of the vehicle) shall not exceed 8 feet 3 inches;
 - (ii) the distance by which any load carried on a vehicle projects beyond the overall width thereof shall not exceed 6 inches on either side;
- (f) the maximum overall length of any vehicle or combination of vehicles, laden or unladen, including tow ropes or drawing bars, shall be as follows--
 - (i) goods vehicles with two axles 33 feet
 - (ii) passenger vehicles with two axles 36 feet
 - (iii) vehicles with three or more axles 36 feet
 - (iv) articulated vehicles 46 feet
 - (v) combination of vehicle and one trailer 59 feet
 - (vi) combination of vehicle and two trailers 72 feet;
- (g) the overhang of any vehicle shall not exceed 50 per cent of the wheelbase of the vehicle;
- (h)
 - (i) the overhang of any load carried by any vehicle shall not project beyond the overall length of the vehicle by more than 6 feet;
 - (ii) where any load projects beyond the overall length of any vehicle by more than 2 feet, the rear extremity of such load shall be plainly indicated by a conspicuous red marker during the day and by a red light at night;
 - (iii) no load shall be carried on any vehicle unless the whole of such load is at all times clear of the road surface;
- (i) the overall height of any vehicle, laden or unladen, shall not exceed 12 feet 6 inches from the road surface;

EXCESSIVE DIMENSIONS

Provided that the highway authority may, from time to time, in its discretion, dispense with any or all of the provisions of this regulation in respect of any particular vehicle, or class of vehicles, or in respect of any particular journey or series of journeys to be performed on a road by such vehicle or class of vehicles.'

Section 46(1) of the *Traffic Act* (Ch. 131) states:

'Any person who drives or uses or causes or permits to be used on a road a vehicle in contravention of the provisions of section 44 [...] shall be guilty of an offence [...].'

The wording of the charge for this offence is as follows:

'did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 44 of the *Traffic Act* (Ch. 131) because the said vehicle measured [specify the length in metres] in length and that length exceeded the maximum length as provided for such vehicle as specified in Regulation 46 of the *Traffic Regulation* (Ch. 131) to wit [specify the maximum length permitted].'

Section 46(2) of the *Traffic Act* (Ch. 131) states:

'For the purpose of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.'

It is recommended that a defendant who commits this offence should be prosecuted under section 46 of the *Traffic Act* (Ch. 131), rather than regulations 46 and 49 of the *Traffic Regulations* (Ch. 131). Regulation 49 creates the offence because it specifies the penalty.

Regulation 3 of the *Traffic Regulations* (Ch. 131) states:

'Where any act or omission is an offence under the Act and these Regulations, nothing in these Regulations shall be deemed to affect the liability of any person to be prosecuted under the Act:

Provided that no person shall be prosecuted twice for the same act or omission.'

TOWING

Regulation 46 of the *Traffic Regulations* (Ch. 131) states (in part):

'Subject to the provision of section 45 of the Act, the following provisions shall apply to any vehicle used on a road –

- (j) no rope, bar or other device used for towing a trailer or towed vehicle shall exceed 15 feet in length, and the presence of such device shall be made easily distinguishable to other users of the road;
- (k) no vehicle shall tow a total of more than two trailers or towed vehicles:

Provided that the highway authority may, from time to time, in its discretion, dispense with any or all of the provisions of this regulation in respect of any particular vehicle, or class of vehicles, or in respect of any particular journey or series of journeys to be performed on a road by such vehicle or class of vehicles.'

Regulation 49 of the *Traffic Regulations* (Ch. 131) states:

'Any person who contravenes any of the provisions of this Part shall be guilty of an offence [...].'

The wording of the charges for those offences are as follows:

- (j) *'did use on a road namely [specify the name of the road] a [rope, bar or device] used for towing a [trailer or towed vehicle] which exceeded 15 feet in length.'*

'did use on a road namely [specify the name of the road] a [rope, bar or device] used for towing a [trailer or towed vehicle] and the presence of the said [rope, bar or device] was not made easily distinguishable to other users of the said road.'
- (k) *'did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] which was towing more than two [trailers or towed vehicles] to wit [specify the number].'*

DANGEROUS LOADS

Section 45(2) of the *Traffic Act* (Ch. 131) states:

‘No vehicle shall be used on a road if it is loaded in such a manner as to make it a danger to other persons using the road or *to persons travelling on the vehicle*; and should any load or part of a load fall from any vehicle on to a road such fact shall be prima facie evidence that the vehicle was loaded in a dangerous manner until the contrary is proved to the satisfaction of the court.’ (emphasis added)

Section 46(1) of the *Traffic Act* (Ch. 131) states:

‘(1) Any person who drives or uses or causes or permits to be used on a road a vehicle in contravention of the provisions of [...] section 45 shall be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 45 of the *Traffic Act* (Ch. 131) because the said vehicle was loaded in such a manner as to make it a danger to other persons using the said road.’

Section 46(2) of the *Traffic Act* (Ch. 131) states:

‘For the purpose of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.’

Regulation 60 of the *Traffic Regulations* (Ch. 131) states (in part):

- ‘(1) There shall be provided for the exclusive use of the driver of every goods vehicle a single seat or a section of continuous seat the front edge of which is not less than 18 inches in length; an such seat shall be placed and constructed so that the driver is able to control the vehicle effectively and with safety.
- (2) No [...] goods of any description shall be carried in such a position or in such a manner as to occupy any part of a driver’s seat or so as to obstruct his movements or view when he is driving the vehicle.
- (3) No [...] goods shall be carried on the right or offside of any driver of a right – hand vehicle, nor to the left or near-side of the driver of a left – hand drive vehicle.’

DANGEROUS LOADS

The wording of the charge for those offences are as follows:

- (2) 'did carry goods in a [position **or** manner] as to:
- occupy part of the driver's seat of the said vehicle which he/she was driving;
- or**
- obstruct the [movements **or** view] of the said vehicle which he/she was driving.'
- (3) 'did carry goods [on the right or offside of the driver of a right-hand drive vehicle **or** to the left or nearside of the driver of a left-hand drive vehicle] whilst driving a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road].'

CARRYING PASSENGERS

[1.0] Generally

Section 56 of the *Traffic Act* (Ch. 131) states (in part):

- '(1) No person in a motor vehicle shall molest or obstruct the driver of such motor vehicle while it is in motion.

- (2) In no motor vehicle on a road shall passengers be carried in such numbers or in such a position as to be likely to interfere with the safe driving of such motor vehicle, and in the event of a contravention of the provisions of this subsection the driver and the person in charge of the motor vehicle shall be guilty of an offence.'

The wording of the charges for those offences are as follows:

- (1) 'in a motor vehicle to wit a [specify the motor vehicle] did [molest **or** obstruct] the driver namely [specify the name of the driver] of the said motor vehicle whilst it was in motion.'

- (2) 'being the [driver **or** person in charge] of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] did carry passengers in the said motor vehicle in such [numbers to wit (specify the number) **or** a position] as to be likely to interfere with the safe driving of the said motor vehicle.'

The penalty for those offences is as provided for by section 56(4).

Section 57 of the *Traffic Act* (Ch. 131) states:

- '(1) Except for the purpose of testing or repairing a motor vehicle, no person shall ride or be carried on the footboard, tailboard, steps, mudguards, canopy, roofing or elsewhere on the outside of any vehicle, on a road.

- (2) No person shall ride or be carried on any load upon a vehicle on a road if such a proceeding is unsafe by reason of the insufficiency of space available for such person to stand or sit, or by reason of the position in which he is carried or the height or arrangement of the load.

- (3) No person shall ride or be carried, nor shall any person cause or permit any other person to ride or be carried upon any vehicle on a road in circumstances in which the person riding or carried may sustain injury by reason of the absence of such railings, sides, tailboards or other things as afford adequate means of hold or support.'

CARRYING PASSENGERS

The wording of the charges for those offences are as follows:

- (1) '[did ride **or** was carried] on the [footboard, tailboard, steps, mudguards, canopy, roofing **or** (describe elsewhere)] on the outside of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] not for the purpose of testing or repairing of said motor vehicle.'
- (2) '[did ride **or** was carried] on a load upon a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] which was unsafe by reason of the [insufficiency of space available for such person to stand or sit, position in which (he/she) was carried **or** (height **or** arrangement of the load)].'
- (3) '[(did ride **or** was carried) **or** did (cause **or** permit) a person namely (specify the name of this person) (to ride **or** be carried)] upon a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] in circumstances in which the person [riding **or** carried] may have sustained injury by reason of the absence of such [railings, sides, tailboards **or** (describe other things)] as afford adequate means of hold or support.'

The penalty for this offence is as provided for by section 57(4).

Regulation 47 of the *Traffic Regulations* (Ch. 131) states:

'Subject to section 67 of the Act, a highway authority may cause or permit traffic signs to be erected, placed or displayed, prohibiting the carriage of passengers on a trailer.'

As regards '*Public License Vehicles*', refer to page **115**.

[2.0] Goods Vehicle

Regulation 60 of the *Traffic Regulations* (Ch. 131) states (in part):

- (1) There shall be provided for the exclusive use of the driver of every goods vehicle a single seat or a section of continuous seat the front edge of which is not less than 18 inches in length; an such seat shall be placed and constructed so that the driver is able to control the vehicle effectively and with safety.
- (2) No person [...] shall be carried in such a position or in such a manner as to occupy any part of a driver's seat or so as to obstruct his movements or view when he is driving the vehicle.

CARRYING PASSENGERS

- (3) No person [...] shall be carried on the right or offside of any driver of a right – hand vehicle, nor to the left or near-side of the driver of a left – hand drive vehicle.'

The wording of the charge for those offences are as follows:

- (2) 'did carry a person namely [specify the name of this person] in a [position **or** manner] as to:
- occupy part of the driver's seat of the said vehicle which he/she was driving;
 - or**
 - obstruct the [movements **or** view] of the vehicle which he/she was driving.'
- (3) 'did carry a person namely [specify the name of this person] [on the right or offside of the driver of a right-hand drive vehicle **or** to the left or nearside of the driver of a left-hand drive vehicle] whilst driving a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road].'

The penalty for those offences is as provided for by regulation 62 of the *Traffic Regulations* (Ch. 131).

Regulation 61 of the *Traffic Regulation* (Ch. 131) states:

- (1) Except with the prior written authorisation of a licensing officer [, as appointed section 4 of the *Traffic Act* (Ch. 131)], no person shall cause or permit a greater number of passengers to be carried on a *goods vehicle* than the number which the vehicle is authorised to carry under the terms of its license.
- (2) For the purposes of this regulation, a licensing officer may, in his discretion, grant such authorisation, subject to such conditions as he may think fit, for the following purposes --
- (a) carrying persons to and from their work and from job to job as may be necessary;
 - (b) carrying persons to load or unload the vehicle;
 - (c) carrying persons transporting produce to market;
 - (d) carrying persons to and from any social occasion when public transport is not readily available.

CARRYING PASSENGERS

- (3) A licensing officer may, in his discretion, grant such authorisation either in respect of a particular journey by a particular goods vehicle or generally in respect of a particular goods vehicle for any journey to be performed by it during a period not exceeding twelve months for any of the purposes specified in the preceding paragraph on payment by the applicant for such authorisation of the prescribed fee.
- (4) A licensing officer shall refuse to grant such authorisation if he is satisfied that the goods vehicle is not a roadworthy condition or is not suitable for the carriage of a greater number of passengers than that which it is authorised to carry under the terms of its license, and, for the purposes of this regulation, a licensing officer may send the goods vehicle in respect of which an application for such authorisation is made for examination at the cost of the applicant.' (emphasis added)

Therefore, an inspection of the '*Vehicle License*' should be made in order to determine the lawful number of passengers that a particular '*Goods Vehicle*' can carry.

As defined in section 2 of the *Traffic Act* (Ch. 131), the term '*Goods Vehicle*' means:

'a motor vehicle constructed or adapted for the *primary* purpose of carrying goods or other burden of any description'. (emphasis added)

The wording of the charge for this offence is as follows:

'did on a road namely [specify the name of the road] without the prior written authorisation of a licensing officer did [cause **or** permit] a greater number of passengers to be carried on a goods vehicle to wit a [specify the goods vehicle] than the number which the said vehicle was authorised to carry under the terms of its licence.'

The penalty for this offence is as provided for by regulation 62 of the *Traffic Regulations* (Ch. 131).

[3.0] Motor Cycle

Section 48 of the *Traffic Act* (Ch. 131) states (in part):

- (1) It shall not be lawful for more than one person in addition to the driver to be carried on a two – wheeled motor cycle on a road, nor shall it be lawful for any such person to be so carried otherwise than sitting astride the cycle and on a proper seat securely fixed to the cycle behind the driver's seat.
- (2) If a person is carried on a cycle in contravention of the foregoing subsection, the driver of the cycle shall be guilty of an offence [...].'

CARRYING PASSENGERS

The wording of the charges for those offences are as follows:

‘being the driver of a two-wheeled motor cycle to wit a [specify the motor cycle] did have more than one person namely [specify the name of the additional pillion passenger] in addition to (him/her) on a road namely [specify the name of the road].’

‘being the driver of a two-wheeled motor cycle to wit a [specify the motor cycle] did have a person namely [specify the name of this person] carried otherwise than sitting astride the cycle and on a proper seat securely fixed to the said cycle behind the driver’s seat on a road namely [specify the name of the road].’

[4.0] Motor Tractor, etc

Regulation 48 of the Traffic Regulations (Ch. 131) states:

‘No person other than the driver may be carried on a motor tractor, bulldozer, grader, crane, road roller or any other vehicle not designed, constructed or adapted to carry passengers:

Provided that the highway authority may, from time to time, authorize the carriage of passengers on such vehicles for purposes of instruction only.’

The penalty for that offence is as provided for by regulation 49.

The wording of the charge for this offence is as follows:

‘did on a road namely [specify the name of the road] carry passengers on a [motor tractor, bulldozer, grader, crane, road roller **or** vehicle to wit a (specify the other type of vehicle)] not designed, constructed or adapted to carry passengers.’

TINTED WINDOWS

Regulation 34 of the *Traffic Regulations* (Ch. 131) states:

- '(1) Every motor vehicle shall be so designed, constructed and used that the driver controlling it has a full view of the road and traffic ahead, and the *windscreen* shall be kept in such condition that the driver's view is not *impeded*.
- (2) No mascot or other object shall be carried in or on a motor vehicle in any position in which it is likely to impede the driver's view of the road and traffic ahead of the motor vehicle.' (emphasis added)

Regulation 39 of the *Traffic Regulations* (Ch. 131) states:

'All glass fitted to motor vehicles shall be maintained in such a condition that the vision of the driver is not *obscured* while the vehicle is being driven on a road, and shall be safety glass so constructed or treated that, in the event of an accident, or if fractured, it does not fly into fragments and is less likely to cause severe cuts or physical injury than ordinary glass.' (emphasis added)

The penalty for committing such offences is as provided for by regulation 49 of the *Traffic Regulations* (Ch. 131).

Therefore, it is no offence to have tinted windows provided the driver's view is not impeded.

To just have tinted windows does not necessarily mean that the driver is committing an offence as provided for by regulation 34 or 39, unless the view of the driver is impeded or obscured.

POLICE NO PARKING SIGN

Section 67 of the *Traffic Act* (Ch. 131) states (in part):

- (1) Subject to and in conformity with such general or other directions as may be given by the Minister, the *highway authority, after consultation with the Commissioner of Police may cause or permit traffic signs to be erected, placed or displayed on or near a road in respect of which it is the highway authority:*

Provided that where the highway authority is not the local authority having jurisdiction over the area concerned, it shall also consult such local authority.

- (2) Notwithstanding anything to the contrary contained in subsection (1), the Minister may in writing require the highway authority to remove, erect, place or display any traffic sign on or near any road under or within the area of its jurisdiction, within such reasonable time as he may specify, and the highway authority shall comply with such requirement.
- (3) Traffic signs shall be of the prescribed size, colour and type *except where the Commissioner of Police authorises the erection or retention of a sign of another character.*
- (4) After the commencement of this Act, no traffic signs shall be placed on or near any road except under and in accordance with the preceding provisions of this section:

Provided that nothing in this subsection shall apply to any notice in respect to the use of a bridge.

- (5) All traffic signs shall be deemed to be of the prescribed or authorised size, colour and type and to have been lawfully erected, placed or displayed until the contrary is proved.' (emphasis added)

Section 66 of the *Traffic Act* (Ch. 131) states (in part):

'Without prejudice to any powers or duties of the police under this Act or any other Act, it shall be lawful for any police officer –

- (a) to regulate all traffic and to keep order and prevent obstruction in all roads, parking places and other places of public resort.'

However, in strict accordance with section 67(1) there should be an agreement between the Commissioner and the '*highway authority*' as to the conditions under which a '*police sign*' can be displayed on a road.

POLICE NO PARKING SIGN

The term '*highway authority*' means

'the Permanent Secretary of the Ministry of Public Works and utilities except where the Minister, by notice, appoints any other person, body, authority or organization to be a highway authority, and the Minister may appoint a highway authority either generally or in respect of any particular area or road'.

A '*police sign*' is a '*traffic sign*' for the purpose of this section provided its use is authorised by the Commissioner under section 67(3). Such authorisation should be in writing.

As provided for by section 2 of the *Traffic Act* (Ch. 131):

- the term '*traffic sign*' means 'any sign, notice, signal, light or other device erected or in any way displayed or caused or permitted to be so erected or displayed by the *highway authority* under section 67, for the purpose of *regulating, restricting or prohibiting traffic or vehicles* of any kind, on a *road*'
 - the term '*vehicle*' includes 'a motor vehicle, a trailer and any other conveyance used on the road';
- and
- the term '*road*' means 'any public road within the meaning of the Roads Act or any Act replacing that Act and includes any other road or way, wharf or car park on which vehicles are capable of traveling and to which the public has access, and includes a bridge over which a road passes'.

A '*police sign*' should only be used for the purpose of regulating, restricting or prohibiting traffic or vehicles of any kind, on a road.

Regulation 59 of the *Traffic Regulations* (Ch. 131) states:

'Subject to any directions which the Minister may give under section 67 of the Act, the traffic signs which the highway authority may cause or permit to be placed on or near a road shall, as to size, colour and type, be as directed from time to time by the Commissioner of Police.'

It is a presumption of fact that a '*police sign*' is a '*traffic sign*' for the purpose of section 67 until the contrary is proved, see subsection (5). Therefore, it is not necessary for the Commissioner to give evidence in court that a '*police sign*' is a '*traffic sign*' for the purpose of that section.

Section 53(1) of the *Traffic Act* (Ch. 131) states (in part):

'Where a police officer in uniform is for the time being engaged in the regulation of traffic on a road, or where a traffic sign has been lawfully placed on or near a road a person driving or propelling a vehicle who ---

POLICE NO PARKING SIGN

(a) [...]; or

(b) fails to comply with the indication given by the sign,

shall be guilty of an offence [...].’ (emphasis added)

The wording of such an offence is as follows:

‘did whilst [driving **or** propelling] a vehicle to wit a [specify the vehicle] did fail to comply with the indication given by a traffic sign to wit ‘Police No Parking’ which had been lawfully placed on or near a road namely [specify the name of the road].’

To ‘*park*’ a vehicle is to leave a vehicle that was being driven in a particular place for a period of time, see *Oxford Advanced Learners Dictionary*.

Therefore, the driver and passengers must leave the vehicle for that offence to be committed.

PUBLIC LICENSE VEHICLES

[1.0] Licensing

Regulation 75 of the *Traffic Regulations* (Ch. 131) states:

‘For the purposes of Part II of the Act (which relates to licensing and registration of motor vehicles) a light public service vehicle shall be licensed as a light bus, a light public service car or a taxi.’

As regards the ‘*Licensing/Registration of Vehicle Generally*’, refer to page **126**.

[2.0] Maximum Number Of Passengers

Regulation 74 of the *Traffic Regulations* (Ch. 131) states (in part):

- (1) Every *public service vehicle* license shall specify the maximum number of passengers inclusive of the driver that may be carried in the vehicle to which it relates.
- (2) Any person who carries or permits to be carried for hire or reward in a public service vehicle any number of passengers in excess of that specified in the license relating to that vehicle, shall be guilty of an offence [...].
- (3) For the purposes of this regulation two persons under the apparent age of sixteen years shall be reckoned as a single passenger.’ (emphasis added)

Therefore, an inspection of the ‘*Public Service Vehicle License*’ should be made in order to determine the lawful number of passengers that a particular public service vehicle can carry.

As provided for by section 2 of the *Traffic Act* (Ch. 131), the term ‘*pubic service vehicle*’ means ‘any motor vehicle which –

- (a) is licensed to carry passengers for hire or reward; or
- (b) plies for the carriage of passengers for hire or reward; or
- (c) is carrying passengers for hire or reward’.

The wording of the charge for this offence is as follows:

‘did [carry **or** permit to be carried] for [hire **or** reward] in a public service vehicle to wit a [specify the vehicle] [specify the number] of passengers which was in excess of the number specified in the license relating to that vehicle to wit [specify the number] of passengers.’

As regards ‘*Carrying An Excess Number Of Passengers On A Goods Vehicle Or Generally*’, refer to page **106**.

PUBLIC LICENSE VEHICLES

[3.0] Display Of Taxi Sign Without License Prohibited

Regulation 78 of the *Traffic Regulations* (Ch. 131) states (in part):

‘Any person who displays or causes or permits to be displayed upon any vehicle that is not licensed as a taxi the word “taxi” or any sign or device representing such vehicle to be a taxi, shall be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did [display **or** (cause **or** permit) to be displayed] upon a vehicle to wit a [specify the vehicle] that was not licensed as a taxi [the word “taxi” **or** a (sign **or** device) representing the said vehicle to be a taxi].’

[4.0] Taxis To Be Inspected Quarterly

Regulation 79 of the *Traffic Regulations* (Ch. 131) states (in part):

- ‘(1) There shall be produced to a licensing officer in the third, sixth and ninth months of the period of validity of every taxi license, a current certificate signed by an inspector and certifying that he has inspected the taxi and that in his opinion it meets the requirements of the Act.
- (2) In the event of any contravention of paragraph (1), the owner and every other person having the custody or control of the taxi concerned shall be guilty of an offence [...].
- (3) For the purposes of this regulation a certificate shall be deemed not to be a current certificate upon the expiration upon the expiration of thirty days from the date of the inspection to which it relates.’

The wording of the charge for this offence is as follows:

‘did fail to produce to a licensing officer a current certificate signed by an inspector and certifying that he/she has inspected a taxi to wit a [specify the vehicle] and that in his/her opinion the said vehicle meets the requirements of the *Traffic Act* (Ch. 131).’

As provided for by regulation 2 of the *Traffic Regulations* (Ch. 131):

- the term ‘*taxi*’ means ‘a light public service car standing or plying for hire’;
- and
- the term ‘*taxi license*’ means ‘a vehicle license issued in respect of a taxi’.

PUBLIC LICENSE VEHICLES

[5.0] Driving A Public Service Vehicle Without Passenger Insurance

Regulation 80(1) of the *Traffic Regulations* (Ch. 131) states (in part):

'It shall not be lawful for any person to drive, or to cause or permit any other person to drive a *public service vehicle* on a road unless there is in force in relation to such *public service vehicle* a policy or insurance which indemnifies the owner of the *public service vehicle* and any other person who at any time drives the *public service vehicle*, whether with or without the authority of the owner, jointly and each of them severally against all liability incurred by the owner and that person jointly or by either of them severally in respect of the death or bodily injury to a passenger while carried on or while entering or alighting from such *public service vehicle*.' (emphasis added)

The wording of the charge for this offence is as follows:

'did [drive **or** (cause **or** permit) another person namely (specify the name of this person) to drive] a public service vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] there not being in force in relation to the said public service vehicle a policy of insurance which indemnifies the owner of the said public service vehicle and any other person who at any time drives the said public service vehicle whether with or without the authority of the owner jointly and each of them severally against all liability incurred by the owner and that person jointly or by either of them severally in respect of the death of or bodily injury to a passenger while carried on or while entering or alighting from the said public service vehicle.'

As regards the issue of '*Motor Vehicles (Third Party Insurance)*', refer to page **148**.

SPEEDING

[1.0] Offence

The offence of speeding is as provided for by section 41(1) of the *Traffic Act* (Ch. 131) which states:

'Any person who drives a motor vehicle on a road at a speed greater than the speed prescribed by any order under section 68 or the speed prescribed for such vehicle or class of vehicles in any regulations under section 82, shall be guilty of an offence [...].' (emphasis added)

The wording of the charge for this offence is as follows:

*'did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] at a speed of [specify the speed] greater than the speed prescribed by an order under section 68 or the speed prescribed for such vehicle or class of such vehicles in the regulations under section 82 of the *Traffic Act* (Ch. 131).'*

Section 85 of the *Traffic Act* (Ch. 131) states:

'No speed limit imposed by or under this Act nor any traffic sign restricting the speed of vehicles on any road shall apply to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purpose, if the observance of such speed limit or traffic sign would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion.'

However, there is no offence for failing to give way to an emergency vehicle because there is no penalty for disobeying regulation 58 which states:

'Every driver shall, upon hearing the sound of any gong, bell or siren indicating the approach of a police vehicle, ambulance or fire engine, at once give such vehicle right of way, and if necessary pull his vehicle to the nearside of the road and stop until the police vehicle, ambulance or fire engine has passed.'

Section 75 of the *Traffic Act* (Ch. 131) states (in part):

'Where a person is prosecuted for an offence under any of the sections of this Act relating to respectively relating to the maximum speed at which motor vehicles may be driven, [...], he shall not be convicted unless --

- (a) he was warned at the time the offence was committed that the question of prosecuting him for an offence under [such sections] would be considered;
- (b) within fourteen days of the commission of the offence a summons for the offence was served on him; or

SPEEDING

- (c) within the said fourteen days a notice of the intended prosecution, specifying the nature of the alleged offence and the time and place where it is alleged to have been committed, was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that --

- (i) failure to comply with this requirement shall not be a bar to the conviction of the accused in any case where the court is satisfied that –
 - (a) neither the name and address of the accused nor the name and address of the registered owner of the vehicle could with reasonable diligence have been ascertained in time for a summons to be served or for a notice to be served or sent as aforesaid; or
 - (b) the accused by his own conduct contributed to the failure;
- (ii) the requirement of this section shall in every case be deemed to have been complied with unless and until the contrary is proved.’

[2.0] Speed Limits

Section 68 of the *Traffic Act* (Ch. 131) states:

- ‘(1) A *highway authority* may, with the approval of the Minister, by *order* prescribe speed limits for any area or road in respect of which it is the highway authority:

Provided that where the highway authority is not the local authority having jurisdiction over the area concerned, it shall consult such local authority.

- (2) Notwithstanding anything to the contrary contained in subsection (1), the Minister may by order amend or revoke any order made under that subsection, and may in like manner prescribe limits for any area or road.’
(emphasis added)

THE TRAFFIC (SPEED LIMITS) (HONIARA) ORDER (Section 68)

1. This Order may be cited as the *Traffic (Speed Limits) (Honiara) Order*.
2. In this Order, “the Honiara speed limit area” means the area defined in the Second Schedule.

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3. In the First Schedule the classes of motor vehicles specified in the first column shall observe the speed limits specified in the second column in relation thereto in the areas specified in the third column in relation thereto.
4. *Any person who drives a motor vehicle at a speed in excess of that permitted by paragraph 3 shall be guilty of an offence and liable to a fine of ten dollars.* (emphasis added)

FIRST SCHEDULE

Class of Vehicle	Speed Limits	Area
Private motor cars, light goods vehicles, light public service vehicles and motor cycles	30 miles per hour	Honiara speed limit area
Others	20 miles per hour 30 miles per hour	Honiara speed limit area All parts of Solomon Islands outside the Honiara speed limit area.

SECOND SCHEDULE

The Honiara speed limit area shall comprise –

- (a) all roads and tracks within the area of authority of the Honiara Town Council as defined by warrant under section 3 of the Local Government Act, except that portion of the main road known as Mendana Avenue which runs from the eastern boundary of the said area of the Honiara Town Council for a distance of 1,960 yards more or less in an approximately westerly direction; and
- (b) that portion of the main road which runs from the westerly boundary of the said area of the Honiara Town Council for a distance of 2,530 yards more or less in an approximately westerly direction,

as marked by speed limit notices on the said main road and more particularly delineated on Plan No. 1016 deposited and available for inspection at the office of the Commissioner of Lands.'

The *Traffic (Speed Limits) (Ngalimbiu) Order* was also issued under section 68 of the *Traffic Act* (Ch. 131) and applies all of that portion of the road running from Honiara to Tetere.

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[3.0] **Proof Of Speeding**

The prosecution can prove that a defendant drove at a certain speed or at a range of speeds, either by:

- an observation of the speedometer of the police motor vehicle.

As regards the *accuracy of speedometers* in motor vehicles, it has been held that such technical, if not scientific, instruments are *presumed to function accurately, unless the contrary is shown*, see *Thompson v Kovacs* [1959] ALR 636 & *Peterson v Holmes* [1927] SALR 419.

Regulation 43(4) of the *Traffic Regulations* (Ch. 131) states:

‘In any case it shall be no defence in any proceedings for exceeding a speed limit to plead that because a vehicle was not fitted with a speedometer, or because the speedometer fitted was not working, the driver was not aware of the speed of such vehicle’;

- by an estimation of the speed of the defendant’s motor vehicle. However, section 41(2) of the *Traffic Act* (Ch. 133) states:

‘A person prosecuted for such an offence as aforesaid shall *not* be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness that person prosecuted was driving the vehicle at a speed exceeding a specified limit.’ (emphasis added)

If it is intended to rely on an estimation of a police officer, the prosecution *must* lay the basis for such evidence.

Factors which may assist include:

- the types of motor vehicles able to be driven;
- the length of time being the holder of a driver’s license;
- and
- policing experience in the detection of speeding offences.

or

- an admission by the defendant.

There is no provision in the *Traffic Act* (Ch. 131) allowing for the use of radar.

SPEEDING

[4.0] Racing

Section 47 of the *Traffic Act* (Ch. 131) states:

‘A person who promotes or takes part in a race or trial of speed between motor vehicles on a road shall, unless the race or trial is authorised by and conducted in accordance with the directions of the Commissioner of Police or other police officer deputed by him for that purpose, be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did [promote **or** take part in] a [race **or** trial of speed] between motor vehicles [specify, if possible] on a road namely [specify the name of the road] which was not authorised by and conducted in accordance with the directions of the Commissioner of Police or other police officer deputed by that officer for that purpose.’

Section 52 of the *Traffic Act* (Ch. 131) states:

‘A person who promotes or takes part in a race or trial of speed on a road between bicycles or tricycles, not being motor vehicles, shall, unless the race or trial is authorised by and conducted in accordance with the directions of the Commissioner of Police or any other police officer deputed by him for that purpose, be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did [promote **or** take part in] a [race **or** trial of speed] on a road namely [specify the name of the road] between [bicycles **or** tricycles] not being motor vehicles which was not authorised by and conducted in accordance with the directions of the Commissioner of Police or any police officer deputed by that officer for that purpose.’

DEFECTIVE VEHICLES

Section 44(1) of the *Traffic Act* (Ch. 131) states:

‘No vehicle shall be used on a road unless *such vehicle and all parts and equipment thereof, including lights and tyres*, comply with the requirements of this Act, and are at all times maintained in such a condition that the driving of the vehicle is not likely to be a danger to other users of the road or to persons travelling on the vehicle.’ (emphasis added)

The penalty for this offence is as provided for by section 46(1) of the *Traffic Act* (Ch. 131).

The wording of the charge for this offence is as follows:

‘did [(drive or use) or (cause or permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 44 of the *Traffic Act* (Ch. 131) because the said vehicle and all of its parts and equipment to wit [specify the defective parts] did not comply with the requirements of the *Traffic Act* (Ch. 131).’

The license of the vehicle may be suspended, subject to section 46(3). As regards ‘*Vehicle License/Registration Generally*’, refer to page **126**.

Part III of the *Traffic Regulations* (Ch. 131) specifies the requirements for vehicles and their parts and equipment.

Section 74 of the *Traffic Act* (Ch. 131) states:

- ‘(1) If in any proceedings under this Act any question arises as to whether a vehicle does or does not comply with any provisions of this Act, the certificate of an *inspector* to the effect that he has examined the vehicle and as to the result of his examination may be read as evidence and shall be prima facie evidence of such examination and as to the result thereof, although the inspector is not called as a witness.
- (2) The court, if it thinks fit, may summon and examine the *inspector* as to the subject matter of his certificate.’ (emphasis added)

An ‘*inspector*’ means ‘any person appointed to be an inspector of vehicles under section 4(2)’, see section 2 of the *Traffic Act* (Ch. 131).

During the course of an inspection of a vehicle a police officer should check the following:

- head lights, rear lights and brake lights: [Regulations 28 & 29];
- reflectors: [Regulation 30];
- reversing lights: [Regulation 33];

DEFECTIVE VEHICLES

- tyres: [Regulations 23 – 25];
 - horn: [Regulation 40];
 - reflecting mirror: [Regulation 33];
 - indicators: [Regulation 37];
 - handbrake [Regulation 27(7)];
 - mudguards: [Regulation 41];
 - speedometer: [Regulation 43];
 - suspension: [Regulation 26];
 - exhaust silencer: [Regulation 31];
 - reversibility: [Regulation 32];
 - mudguards: [Regulation 41];
 - speedometer, refer to page **121**;
 - windscreen wipers. [Regulation 44];
- and
- windscreen, refer to page **111**.

It is recommended that a defendant who commits this offence should be prosecuted under section 46 of the *Traffic Act* (Ch. 131), rather than regulations 46 and 49 of the *Traffic Regulations* (Ch. 131). Regulation 49 creates the offence because it specifies the penalty.

Regulation 3 of the *Traffic Regulations* (Ch. 131) states:

‘Where any act or omission is an offence under the Act and these Regulations, nothing in these Regulations shall be deemed to affect the liability of any person to be prosecuted under the Act:

Provided that no person shall be prosecuted twice for the same act or omission.’

DEFECTIVE VEHICLES

Section 72 of the *Traffic Act* (Ch. 131) states (in part):

- '(4) Any police officer, [...], if he is of the opinion that any vehicle is being used in contravention of section 44 or section 45 or in contravention of any regulations relating to construction, use and equipment of vehicles, *may by order in writing prohibit the use of such vehicle under such conditions and for such purposes as he may consider necessary for the safety of the public or to ensure that such vehicle does comply with the aforementioned provisions; and where any such order specifies any repairs or defects, it shall remain in force until the repairs or defects specified therein have been satisfactorily completed and remedied and the vehicle has been certified as complying with the aforesaid conditions with respect to construction, use and equipment.*

- (5) Any person who permits the use of, or drives, any vehicle in respect of which any prohibition or restriction is in force other than in conformity with any conditions or for such purpose as may have been specified shall be guilty of an offence [...].

- (6) Where any vehicle is required to be examined and tested for the purpose of being certified as complying with the provisions of this Act, the fee, if any, shall be paid by the owner of the vehicle.

- (7) Any person who fails to comply with any instruction or order given under this section shall be guilty of an offence [...]' (emphasis added)

The wording of the charge for the offence as provided for by section 72(5) is as follows:

'did [permit the use of **or** drive] a vehicle to wit a [specify the vehicle] in respect of which a [prohibition **or** restriction] was in force other than in conformity with [the condition/s **or** purpose] as specified in the [prohibition **or** restriction] to wit [specify the (condition/s **or** purpose)].'

The wording of the charge for the offence as provided for by section 72(7) is as follows:

'did fail to comply with an [instruction **or** order] given under section 72 of the *Traffic Act* (Ch. 131) given by [specify the name of this person].'

Section 73 of the *Traffic Act* (Ch. 131) states:

'It shall be lawful for any police officer to detain at a police station or other place of safety any vehicle which has been removed from a road or other or other public place under section 72 until such inquiries have been made by the police as they may think necessary in the circumstances of the case.'

VEHICLE LICENSE/REGISTRATION

[1.0] Vehicles To Be Licensed

Section 7(1) of the *Traffic Act* (Ch. 131) states (in part):

‘Subject to section 13 [*‘License to be displayed on vehicle’*] any person who uses or permits to be used on a road, which is responsible at the public expense [, as defined in subsection (2),] any motor vehicle or trailer which is not licensed under and in accordance with the provisions of this Part, shall, unless such person, vehicle or trailer is exempted from the provisions of this Act or any regulations made thereunder [, as provided for by section 8 of the *Traffic Act* (Ch. 131) and regulation 15 of the *Traffic Regulations* (Ch. 113),] be guilty of an offence [...].’

Therefore, all vehicles to be used on a road open to and used by the public and repaired with public funds must be licensed, unless otherwise exempted, ie., those vehicles specified in section 8 of the *Traffic Act* (Ch. 131) and regulation 15 of the *Traffic Regulations* (Ch. 131) and vehicles used by the Participating Police Force.

The wording of the charge for this offence is as follows:

‘did [use **or** permit to be used] a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] which was repairable at the public expense and which was not licensed under and in accordance with the provisions of Part II of the *Traffic Act* (Ch. 131) and the said [vehicle **or** trailer] was not exempted from the provisions of the *Traffic Act* (Ch. 131) or any regulations made thereunder.’

Considering that this charge contains a ‘*negative averment*’, the onus is technically on the defendant to prove that the motor vehicle or trailer was licensed/registered. However, the prosecution should obtain a copy of the appropriate record.

Section 76 of the *Traffic Act* (Ch. 131) states:

‘In any proceedings under this Act, an extract from the records of registered vehicles, certified under the hand of a licensing officer, may be received although the licensing officer is not called as a witness, and shall be prima facie evidence of the facts therein set forth.’

As regards ‘*Dealers General License*’, refer to sections 16 to 18 of the *Traffic Act* (Ch. 131) and regulations 10 to 13 of the *Traffic Regulations* (Ch. 131).

Section 7(4) of the *Traffic Act* (Ch. 131) states:

‘Any person who uses a motor vehicle for which a license fee has been paid as a motor vehicle of a class for which a higher license fee is payable and has not been paid and any person who permits any motor vehicle to be so used shall be guilty of an offence [...].’

VEHICLE LICENSE/REGISTRATION

The wording of the charge for this offence is as follows:

‘did [use **or** permit to be used] a motor vehicle to wit a [specify the motor vehicle] for which a licence fee had been paid as a motor vehicle of a class for which a higher licence fee is payable and had not been paid.’

[2.0] Vehicles To Have Identification Plates

Section 12 of the *Traffic Act* (Ch. 131) states:

‘Any person who uses any motor vehicle on any road or causes or permits any motor vehicle to be so used without having affixed thereto in the *prescribed manner* [, as specified in regulation 8 of the *Traffic Regulations* (Ch. 131),] the *prescribed number of identification plates* [, as specified in regulation 14 of the *Traffic Regulations* (Ch. 131),] of the *prescribed design and colour* [, as specified in regulation 9 of the *Traffic Regulations* (Ch. 131),] on which is inscribed the registration number of the vehicle or the dealer’s general licence shall be guilty of an offence [...].’

Therefore, all vehicles should have registration plates affixed, unless otherwise exempt.

The wording of the charge for this offence is as follows:

‘did [use **or** permit to be used] a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] without having affixed thereto in the prescribed manner [the prescribed number of identification plates of the prescribed design and colour on which was inscribed the registration number of the vehicle **or** the dealer’s general licence].’

[3.0] Vehicle License To Be Displayed

Section 13(1) of the *Traffic Act* (Ch. 131) states:

‘No vehicle which is required to be licensed shall be used on a road unless the license, which shall be legible and in no way defaced, is displayed on the vehicle in the prescribed manner [, as specified in regulation 14 of the *Traffic Regulations* (Ch. 131)].’

Therefore, all vehicles must have its license displayed in the prescribed manner as specified in regulation 14 of the *Traffic Regulations* (Ch. 131).

The wording of the charge for this offence is as follows:

‘on a road namely [specify the name of the road] did [use **or** permit to be used] a vehicle to wit a [specify the vehicle] the licence to which was [illegible **and/or** defaced **and/or** displayed on the said vehicle not in the prescribed manner].’

VEHICLE LICENSE/REGISTRATION

The penalty for this offence is as provided for by section 13(2) of the *Traffic Act* (Ch. 131).

DRIVING LICENSE

[1.0] Drivers

Section 20(1) of the *Traffic Act* (Ch. 131) states:

'No person shall drive a motor vehicle of any class on a road unless he is the holder of a valid driving license or a provincial license [, see section 23 of the *Traffic Act* (Ch. 131),] endorsed in respect of that class of vehicle.'

Therefore, all persons who drive vehicles must have a current driving license for the class of vehicle which he/she is driving, unless otherwise exempt. Obviously, officers who drive PPF vehicles should be the holder of a current driving license for the vehicle in question, even though they are exempt.

The wording of the charge for this offence is as follows:

'did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] not being the holder of a valid driving licence or a provisional licence endorsed in respect of that class of vehicle.'

The penalty for this offence is as provided for by section 20(4) of the *Traffic Act* (Ch. 131).

Considering that this charge contains a '*negative averment*', the onus is technically on the defendant to prove that he/she is the holder of a valid driving license. However, the prosecution should obtain a copy of the appropriate record.

The law relating to '*Negative Averments*' is examined commencing on page **3**.

Section 76 of the *Traffic Act* (Ch. 131) states:

'In any proceedings under this Act, an extract from the records of registered vehicles, certified under the hand of a licensing officer, may be received although the licensing officer is not called as a witness, and shall be prima facie evidence of the facts therein set forth.'

As regards the revocation of a driving license by a court upon application by the prosecution, refer to section 28 of the *Traffic Act* (Ch. 131).

[2.0] Owners/In - Charge

Section 20(2) of the *Traffic Act* (Ch. 131) states:

'No person who owns or who has charge of a motor vehicle of any class shall cause or permit any person to drive such motor vehicle unless such person is the holder of a valid driving license or a valid provisional license endorsed in respect of that class of motor vehicle.'

DRIVING LICENSE

Therefore, an owner or a person in charge of a motor vehicle who causes, directs, requires or permits a person who is unlicensed to drive his/her motor vehicle commits this offence.

The wording of the charge for this offence is as follows:

‘being [the owner of **or** in charge of a motor vehicle] to wit a [specify the motor vehicle] did [cause **or** permit] a person namely [specify the name of this person] to drive the said motor vehicle whilst the said person was not the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motor vehicle.’

The penalty for this offence is as provided for by section 20(4) of the *Traffic Act* (Ch. 131).

[3.0] Production of Driving License

Section 25 of the *Traffic Act* (Ch. 131) states (in part):

‘Any person driving a motor vehicle on a road shall carry his driving license or provisional license and, on being so required by a police officer, shall produce it for examination, and if he fails to do so, he shall be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] did fail to carry (his/her) [driving licence **or** provisional licence] and on being so required by a police officer namely [specify the rank and name of police officer] did fail to produce the said license for examination.’

Section 25 of the *Traffic Act* (Ch. 131) states (in part):

‘Provided that a person shall not be convicted of an offence against this section by reason only of failure to carry or to produce his driving license or provisional license if he produces it within three days at such police station within Solomon Islands as may be specified by him at the time its production was required.’

[4.0] Minimum Age

Section 42 of the *Traffic Act* (Ch. 131) states (in part):

‘(1) A person shall not drive on a road a motor vehicle of a class or description specified in the first column of the following Table if he is under the age specified in relation thereto in the second column of that Table:

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[...]

Table

	Class or description of motor vehicle	Age
1.	Motor cycle or invalid carriage	16
2.	Private motor car or light goods vehicle	17
3.	Public service vehicle or, with the written consent of a licensing officer	18
4.	All other motor vehicles	18

[...]

- (3) A person who drives, or causes or permits a person to drive, a motor vehicle in contravention of the provisions of this section relating to the minimum age for driving a motor vehicle shall be guilty of an offence [...].’

Therefore, a driver of a vehicle specified in the Table must:

- be the holder of a driving license;
- and
- be at least of the specified age.

The wording of the charge for this offence is as follows:

‘aged [specify the age of the defendant/accused] did [drive **or** (cause **or** permit) a person namely (specify the name of this person) to drive] a motor vehicle to wit a [specify the motor vehicle] in contravention of the provisions of section 42(3) of the *Traffic Act* (Ch. 131) relating to the minimum age for driving a motor vehicle.’

[5.0] Disqualified Driving

Section 35(b) of the *Traffic Act* (Ch. 131) states:

If a person disqualified from holding or obtaining a license while he is so disqualified drives on a road a motor vehicle, or if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description shall be guilty of an offence [...].’

The wording of the charges for these offences are as follows:

‘being disqualified for holding or obtaining a licence did drive on a road namely [specify the name of the road] a motor vehicle to wit [specify the motor vehicle].’

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'being disqualified for holding or obtaining a licence of a particular [class **or** description] to wit [specify the (class **or** description)] did drive on a road namely [specify the name of the road] a motor vehicle of the said [class **or** description].'

See also the following sections of the *Traffic Act* (Ch. 131):

- section 32 [*'Disqualification Of Persons Under Age'*];
- section 33 [*'Disqualification To Prevent Duplication Of Licenses'*];
- and
- section 36 [*'Endorsement Of License'*].

[6.0] Applying For Or Obtaining License Whilst Disqualified

Section 35(a) of the *Traffic Act* (Ch. 131) states:

'If a person disqualified from holding or obtaining a license applies for or obtains a license while he is so disqualified shall be guilty of an offence [...].'

The wording of the charge for this offence is as follows:

'being disqualified for holding or obtaining a licence did [apply for **or** obtain a licence] while (he/she) was so disqualified.'

DISQUALIFICATION OF DRIVERS' LICENSES

[1.0] General Principles

In *Howard Haomae v R* (Unrep. Criminal Appeal Case No. 106 of 2001) Palmer J commented at page 1:

'[T]he presiding Magistrate did not pass any sentence on the Appellant. It appears the order for disqualification was used as the penalty. This is not the correct approach. [...] The correct approach is first, to determine the appropriate penalty to be imposed, then go on next to consider whether an order for disqualification is mandatory under Part I or discretionary under Part II of the Schedule. If discretionary, he should then go on to consider the period of disqualification to be imposed taking into account the circumstances of the case, including the nature of the offence, the antecedents of the appellant or accused, and the possible effects on his job. For instance, if a person drives to earn his living, such as a bus driver or a taxi – driver, instead of ordering him to be disqualified for 12 months, the court might impose an order for disqualification for say 9 months, or instead of 6 months, 3 months.' (emphasis added)

See also: *R v Brown & Taylor, Ex parte Metropolitan Police Commissioner* (1962) 46 CrAppR 218.

In *R v David Leliana* (Unrep. Criminal Review Case No. 6 of 1998) Palmer J commented at page 1:

'Magistrates must get used to thinking about whether to impose an order for disqualification or not whenever any traffic offence is being dealt with.'

Unless an offence is specified in the *Schedule* to the *Traffic Act* (Ch. 131) there is *no* power to disqualify a defendant, see *Howard Haomae v R* (*supra*).

Section 29(1) of the *Traffic Act* (Ch. 131) specifies a *minimum* period of '*disqualification*', see *R v Timothy Sulega* (Unrep. Criminal Review Case No. 133 of 1999; Palmer J; at page 2) & *R v Matthew Iroga* (Unrep. Criminal Review Case No. 8 of 1998; Palmer J; at page 1).

A period of disqualification commences from the moment it is pronounced, see *Aloyscius Votu v R* (Unrep. Criminal Appeal Case No. 19 of 2002; Kabui J).

The issue of '*previous convictions*' is important when considering the question of '*disqualification*'.

In *R v Maeli Rinau* (Unrep. Criminal Review Case No. 18 of 1996) Palmer J stated at page 3:

DISQUALIFICATION OF DRIVERS' LICENSES

'Magistrates must record whether there are previous convictions or not. *If none was available, at the hearing, then an adjournment should be made and the prosecutor required to produce them.* The issue on previous convictions is important when passing sentence and also when considering the question of disqualification under section 28 of the Traffic Act.' (emphasis added)

However, by virtue of the application of section 31 of the *Traffic Act* (Ch. 131) any period of disqualification imposed of *less than two years* is in effect '*two years*'. Such defendants *can not* apply to have such disqualification removed for at least two years. Therefore, when courts are considering the imposition of a disqualification period in respect of an offence for which such an order is '*discretionary*', the application of section 31 of the *Traffic Act* (Ch. 131) should also be considered.

As regards an appeal against a disqualification order, refer to section 30 of the *Traffic Act* (Ch. 131).

See also: *R v Jack Lae* (Unrep. Criminal Review Case No. 72 of 1992; Muria J); *Peter Baru v R* [1988 – 89] SILR 132; *R v Ramofaua* (Unrep. Criminal Review Case No. 5799 of 1999; Palmer J) & *Charles Fosala v R* [1988 – 89] SILR 139.

[2.0] Statutory Provision

Section 29 of the *Traffic Act* (Ch. 131) states:

- '(1) Where a person is convicted of an offence specified in Part I of the Schedule the court *shall* order him to be disqualified for such period *not less than* twelve months as the court thinks fit *unless* the court for *special reasons* thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified. [*Obligatory Disqualification*']
- (2) Where a person is convicted of an offence specified in Part II of the said Schedule, the court *may* order him to be disqualified for such period as the court thinks fit. [*Discretionary Disqualification*']
- (3) Where a person convicted of an offence specified in the said Part I or the said Part II has *within the three years immediately preceding the commission of the offence and since the commencement of this Act been convicted on not less than two occasions of an offence specified in those Parts and particulars of the conviction have been ordered to be endorsed in accordance with section 36*, the court *shall* order him to be disqualified for such period not less than six months as the court thinks fit, unless the court is satisfied, having regard to all the circumstances, that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

DISQUALIFICATION OF DRIVERS' LICENSES

- (4) Where a person convicted of an offence under section 43(1) (driving or attempting to drive while under the influence of drink or drugs) has within the ten years immediately preceding the commission of the offence been convicted of such an offence, subsection (1) of this section *shall* apply in relation to him with the substitution of three years for twelve months.
- (5) The period of any disqualification imposed under subsection (3) of this section or on a conviction of an offence under section 35(b) (driving while disqualified) *shall* be in addition to any other period of disqualification imposed (whether previously or on the same occasion) in Solomon Islands whether under this Act or otherwise.
- (6) The foregoing provisions of this section *shall* apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of an offence specified in the said Part I as if the offence were specified in the said Part II.
- (7) Where a person is convicted of an offence specified in the said Part I or II the court *may*, whether or not he has previously passed a *test of competence to drive* under this Act or under any Act repealed by this Act, and whether or not the court makes an order under the foregoing provisions of this section, order him to be disqualified until he has, since the date of the order, passed that test; and a disqualification by virtue of an order under this subsection shall be deemed to have expired on production to a licensing officer of satisfactory evidence, that the person disqualified has, since the order was made, pass that test.
- (8) In this section “disqualified” means disqualified for holding or obtaining a licence to drive a motor vehicle granted under this Part and “disqualification” shall be construed accordingly.
- (9) The Minister may by order amend or replace the Schedule and in doing so may provide for the insertion or addition of offences relating to the driving, use or control of motor vehicles under any law or Act having effect in Solomon Islands.’ (emphasis added) [words in brackets added]

[3.0] Obligatory Disqualification

In *R v Matthew Iroga* (Unrep. Criminal Review Case No. 8 of 1998) Palmer J stated at page 1:

‘Section 28(1) [now section 29] requires the court to disqualify a person convicted under section 42(1) [now section 43(1) and the other offences specified in Part I of the Schedule] for a minimum period of twelve months *unless* there are *special reasons* which the court thinks fit not to do so. What this means is that unless there

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are special reasons given and accepted by the court, it is required to impose an order for disqualification of not less than twelve months. If the court finds there are special reasons, it must then go on to decide whether it should exercise its discretion to disqualify for the minimum period or for a lesser period.' (emphasis added) [words in brackets added]

The standard of proof on the defendant to prove that there are '*special reasons*' for a disqualification period less than twelve months is on the '*balance of probabilities*', see *Pugsley v Hunter* [1973] 2 AllER 10; [1973] RTR 284; [1973] 1 WLR 578; [1973] CrimLR 247.

In *R v George Ale* (Unrep. Criminal Case No. 525 of 1996) Palmer J stated at page 1:

'A clear definition of what is a "special reason" is, can be found in the text "Road Traffic Offences" by G. S. Wilkinson, Fourth Edition, 1963, chapter VI. At page 312, the learned Author states:

"A special reason is one special to the facts of the particular case, ie., special to the facts which constitute the offence. It is a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment." (emphasis added)

In *Whittall v Kirby* [1946] 2 AllER 552 [[1947] KB 194] Lord Goddard defined the term '*special reason*' at page 555 as follows:

'A "special reason" within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. *It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment.*' (emphasis added)

A circumstance peculiar to the offender as distinguished from the offence is *not* a '*special reason*' within the exception, see *Andrew Dora v R* (Unrep. Criminal Appeal Case No. 3 of 1976; Davis CJ; at page 3).

An short distance driven may in appropriate circumstances amount to a '*special reason*', see *James v Hall* [1972] 2 AllER 59 & *Coombes v Kehoe* [1972] 2 AllER 55.

In *R v Daeolo Wale* (Unrep. Criminal Review Case No. 23 of 1997) Palmer J held at page 2:

'Employment and family needs are not directly connected with the commission of the offence of driving whilst under the influence of drink and hence do not amount to "special reasons"'.
'

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Unless the relevant facts sought to be submitted in order to substantiate the '*special reasons*' are admitted by the prosecution, evidence *must* be given, see *Brown v Dyerson* (1968) 52 CrAppR 630; [1968] 3 WLR 615; [1969] 1 QB 45.

See also: *R v Ben Ramofaua* (Unrep. Criminal Review Case No. 5799 of 1999; Palmer J); *R v Fred Noda* (Unrep. Criminal Case No. 9 of 1996; Palmer J); *Anna Langley v R* (Unrep. Criminal Appeal Case No. 17 of 1978; Davis CJ); *R v Enley Honimae* (Unrep. Criminal Review Case No. 42 of 1996; Palmer J); *David Billy Aete'e v R* (Unrep. Criminal Appeal Case No. 3 of 1980; Daly CJ); *R v Wilkins* (1958) 42 CrAppR 236; *Delaroy – Hall v Tadman, Earl & Lloyd & Watson v Last* (1969) 53 CrAppR 143; *Brewer v Metropolitan Police Commissioner* (1969) 53 CrAppR 157; *R v Scott* (1968) 53 CrAppR 319; *R v Jackson & Hart* (1968) 53 CrAppR 341; *R v Baines* (1970) 54 CrAppR 481; *R v Messom* (1973) 57 CrAppR 481; *Taylor v Rajan* [1974] 2 WLR 385; [1974] 1 AllER 1087; [1974] QB 424; [1974] CrimLR 188; (1974) 59 CrAppR 11; *Fraser v Barton* (1974) 59 CrAppR 15 & *Director of Public Prosecutions v Feeney* (1989) 89 CrAppR 173; [1989] RTR 112.

[4.0] Discretionary Disqualification

Section 29(2) of the *Traffic Act* (Ch. 131) states:

'Where a person is convicted of an offence specified in Part II of the said Schedule, the court *may* order him to be disqualified for such period as the court thinks fit.'
(emphasis added)

The prospects of employment is one factor which should be taken into account by a court in determining whether to impose a period of disqualification, see *R v Weston* (1982) 4 CrAppR(S) 5.

[5.0] Driving Test

The power to make an order that a defendant *must* pass a '*driving test*' in order to have the disqualification of his/her drivers license removed after serving the period of disqualification ordered by the court *should not be used punitively*, see *R v Donnelly* (1975) 60 CrAppR 250.

It should be used where there is reason to question the offender's general competence to drive. It may also be appropriate where the offender is disqualified for a substantial period so that he/she may become familiar with changing traffic conditions by the time his/her disqualification has expired, see *R v Guilfoyle* (1973) 57 CrAppR 549.

See: *R v Murphy* (1989) 89 CrAppR 176; [1989] RTR 236.

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[6.0] Schedule

SCHEDULE
(Section 29)

Part I

Offences Involving *Obligatory* Disqualification

1. An offence under section 35(b) (driving while disqualified).
2. Manslaughter by the driver of a motor vehicle.
3. An offence under section 38 (causing death by dangerous driving).
4. An offence under section 39 (dangerous driving, etc.) committed within three years after a previous conviction of an offence under that section or under section 38 thereof.
5. An offence under section 43(1) (driving, etc., under the influence of drink or drugs).

Part II

Offences Involving *Discretionary* Disqualification

6. An offence of driving without a license contrary to section 20, committed by driving a motor vehicle in a case where either no license authorising the driving of that vehicle could have been granted to the offender or, if a provisional (but no other) license to drive it could have been granted to him, the driving would not have complied with the conditions thereof.
7. An offence under section 23(3) (failure to comply with conditions of provisional license).
8. An offence under section 39 (dangerous driving, etc.) committed otherwise than as mentioned in paragraph 4 of this Schedule.
9. An offence under section 40 (careless driving, etc.)
10. An offence mentioned in section 41(1) (speeding).
11. An offence under section 42 (driving, or causing or permitting a person to drive, a motor vehicle in contravention of the provisions of the Act relating to the minimum age for driving motor vehicles).
12. An offence under section 43(2) (being in charge of a motor vehicle while under the influence of drink or drugs).

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13. An offence under section 46 (using a vehicle which is in a defective condition or overloaded) committed by using a vehicle on a road or causing or permitting a vehicle to be so used either --
 - (a) so as to cause, or to be likely to cause danger by the condition of the vehicle or its parts or accessories, the number of passengers carried by it or the weight, distribution, packing or adjustment of its load; or
 - (b) in breach of a requirement as to brakes, steering gear or tyres.
14. An offence under section 47 (racing, etc.).
15. An offence under section 48(2) (carrying passengers on motor cycle in contravention of the section).
16. An offence under section 53 (failure to comply with traffic directions) committed in respect of a motor vehicle by a failure to comply with a direction of a police officer or an indication given by a traffic sign.
17. An offence under section 55 (leaving vehicle in dangerous position) committed in respect of a motor vehicle.
18. An offence under section 59 (taking, etc., motor vehicle without authority).
19. An offence under section 63 (failure to stop, etc., after accident).
20. An offence under section 8 of the Motor Vehicles (Third – Party Insurance) Act (use of motor vehicle not insured against third – party risks).
21. An offence under section 66 of the Liquor Act (consuming liquor in a vehicle).

[7.0] Application To Remove Disqualification

Section 31 of the *Traffic Act* (Ch. 131) states:

- '(1) Subject to the provisions of the section, a person who by an order of a court is disqualified for holding or obtaining a license may apply to the court by which the order was made to remove the disqualification, and on any such application the court may, as it thinks proper, having regard to the character of the person disqualified and his conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, either by order remove the disqualification as from such date as may be specified in the order or refuse the application.

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- (2) No application shall be made under the foregoing subsection for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date of the order by which the disqualification was imposed, that is to say --
 - (a) two years, if the disqualification is for less than four years;
 - (b) one half of the period of the disqualification, if it is for less than ten years but not less than four years;
 - (c) five years in any other case;

and in determining the expiration of the period after which under this subsection a person may apply for the removal of a disqualification, any time after the conviction during which the disqualification was suspended or he was disqualified shall be disregarded.

- (3) Where an application under subsection (1) is refused, a further application thereunder shall not be entertained if made within three months after the date of the refusal.
- (4) If under this section a court orders a disqualification to be removed, the court shall cause particulars of the order to be endorsed on the license, if any, previously held by the applicant and the court shall in any case have power to order the applicant to pay the whole or any part of the costs of the application.
- (5) The foregoing provisions of this section shall not apply where the disqualification was imposed under section 29(3).'

In *R v Timothy Sulega* (Unrep. Criminal Review Case No. 133 of 1999) Palmer J stated at page 3:

'Subsection 31(1) of the Traffic Act does provide for an application to be made to the court for removal of the disqualification imposed. However, and this is the crucial part, subsection (2) imposes limits under which an application can be made. A disqualified driver therefore does not have right to apply at any time, and the court does not have right to entertain any such application unless it falls within those limits set by law. What are those limits?

The limit set under paragraph 31(2)(a) and which is the relevant part here is that, a person can only be qualified to apply under section 31(1) if at least two years of his disqualification period had expired, and provided his order for disqualification was less than four years. So if a person has been disqualified for say three years, the minimum period of two years must have expired before he can apply under section 31. But what if his disqualification period is 18 months? The same rule applies. He must have had two years before he can apply. It follows a person disqualified for

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anything less than two years cannot apply for removal of his disqualification (see Wilkinson's Road Traffic offences Eight Edition page 646). There is no discretion involved. If the accused disagrees his only recourse is by way of appeal to this Court.'

TRAFFIC ACCIDENTS

[1.0] Traffic Accident Investigation

It is the duty of police to investigate all traffic accidents if it is suspected that an offence has been committed.

Upon arrival at the scene of a traffic accident it is necessary to:

- determine whether any person has been injured or killed;
- provide assistance to the injured persons;
- determine how any deceased persons were killed;
- determine whether an offence has been committed;
- determine the identity of the drivers;
- interview the driver of the vehicle at fault in compliance with the law, see page **30**;
- obtain statements from all witnesses, including the driver not at fault;
- prepare a sketch plan of the incident scene.

A sketch plan should include the position of vehicles after the collision; skid marks, including their length; gauge marks, including their length; distances from fixed objects at the incident scene to the position of the vehicles and the position of any deceased at the incident scene;

- inspect the vehicles involved in order to determine the extent of damage as a consequence of the accident and whether such vehicles were defective, see page **123**;

and

- arrange for the vehicle of the driver at fault to be examined by a mechanic in order to determine whether any defect was the cause of the traffic accident and should the driver have been aware of the defect prior to the accident, see page **67**.

Section 64 of the *Traffic Act* (Ch. 131) states (in part):

'Where an accident arises out of the presence of a motor vehicle on a road, any police officer in uniform or upon production of his authority if so required, may –

- (a) inspect such vehicle and for that purpose may enter at any reasonable time any premises where the vehicle is;

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and

- (b) order any person in charge of such vehicle not to move it for such reasonable time as he may require for the purpose of investigating the cause of the accident and preparing any plan or report,

and any person who obstructs any police officer in the due exercise of his powers or performance of his duties under this section, or fails to comply with any order under this section shall be guilty of an offence [...].’

The wording of the charge for this offence is as follows:

‘did [obstruct a police officer namely (specify the rank and name of the officer) in the (due exercise of [his/her] powers **or** performance of [his/her] duties) **or** fail to comply with an order issued by a police officer namely (specify the rank and name of the officer)] under section 64 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the defendant did (obstruct **or** fail to comply) in accordance with that section].’

Section 74 of the *Traffic Act* (Ch. 131) states:

- ‘(1) If in any proceedings under this Act any question arises as to whether a vehicle does or does not comply with any provisions of this Act, the certificate of an *inspector* to the effect that he has examined the vehicle and as to the result of his examination may be read as evidence and shall be prima facie evidence of such examination and as to the result thereof, although the inspector is not called as a witness.
- (2) The court, if it thinks fit, may summon and examine the *inspector* as to the subject matter of his certificate.’ (emphasis added)

An ‘*inspector*’ means ‘any person appointed to be an inspector of vehicles under section 4(2)’, see section 2 of the *Traffic Act* (Ch. 131).

[2.0] Failure To Remain

Section 63 of the *Traffic Act* (Ch. 131) states (in part):

- ‘(1) If, in any case, owing to the presence of a motor vehicle on a *road*, an accident occurs whereby injury or damage is caused to any person, vehicle, or animal, the driver of the motor vehicle shall –
 - (a) stop, and if required so to do by any person having reasonable grounds for so requiring, give his name and address, and also the name and address of the owner and the identification marks of the vehicle; or

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- (b) if he has reasonable cause to believe that the safety of his person, passengers or vehicle would be endangered by so stopping, proceed forthwith to the nearest police station and there make a report of the accident and of his reasons for not stopping.
- (2) If in the case of any such accident as aforesaid –
 - (a) the driver of a motor vehicle does not for any reason give his name and address to any such person as aforesaid; or
 - (b) any property or any other vehicle is damaged and the owner or other person in charge of such vehicle or property is not present; or
 - (c) any injury has been caused to any person,

the driver shall report the accident at a police station or to a police officer as soon as reasonably possible.
- (3) The owner of a motor vehicle shall supply the police with all information necessary for the identification of a driver involved in an accident.
- (4) Any person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence [...].’

The wording of the charges for the offences provided for by this section are as follows:

- (1)(a) ‘being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did stop but did fail to give (his/her) name and address and also the name and address of the owner and the identification marks of the said motor vehicle to a person namely [specify the name of this person] having reasonable grounds for so requiring.’
- (b) ‘being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to stop although (he/she) had no reasonable cause to believe that the safety of (his/her) [person, passengers **or** vehicle] would be endangered by so stopping.’

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'being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to stop and proceed forthwith to the nearest police station and there make a report of the accident and of (his/her) reasons for not stopping.'

- (2)(a) 'being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although (he/she) did not for any reason give (his/her) name and address to a person namely [specify the name of this person] as required by section 63(1) of the *Traffic Act* (Ch. 131).'
- (b) 'being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although [property to wit (specify the property) **or** another vehicle to wit a (specify the vehicle)] was damaged and the owner or person in charge of the said [vehicle **or** property] was not present.'
- (c) 'being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although injury had been caused to a person namely [specify the name of this person].'
- (3) 'being the owner of a motor vehicle to wit a [specify the motor vehicle] involved in an accident did refuse to supply a police officer namely [specify the rank and name of the officer] with all information necessary for the identification of the driver in the said accident.'

Section 63(5) of the *Traffic Act* (Ch. 131) states:

'Nothing in this section shall be construed to the prejudice of the provisions of section 55 [*Leaving Vehicle in Dangerous Position*] nor to require any person to stop or leave his vehicle in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road.'

OBLIGATIONS OF OWNERS

Section 77 of the *Traffic Act* (Ch. 131) states:

- '(1) Where the driver of a vehicle is alleged to be guilty of an offence under this Act –
 - (a) the owner of the vehicle shall give such information as to the identity of the driver as he may be required to give by a police officer; and
 - (b) any other person shall, if required by a police officer, give all information which it is in his power to give as to the identity of the driver or which may lead to the identification of the driver.
- (2) A person who fails to comply with the requirements of paragraph (a) of the last foregoing subsection shall be guilty of an offence unless he shows to the satisfaction of the court that he did not know and could not with reasonable diligence have ascertained who the driver of the vehicle was, and a person who fails to comply with the requirement of paragraph (b) of that subsection shall be guilty of an offence [...].'

The wording of the charges as provided for by this section are as follows:

'being the owner of a vehicle the driver of which namely [specify the name of the driver] was alleged to be guilty of an offence under the *Traffic Act* (Ch. 131) did fail to comply with the requirements of paragraph (a) of section 77(1) of the said Act in that (he/she) did not give such information as to the identity of the said driver as required to give by a police officer namely [specify the rank and name of the officer].'

'did fail to comply with the requirement of paragraph (b) of section 77(1) of the *Traffic Act* (Ch. 131) in that (he/she) as required by a police officer [specify the rank and name of the officer] did not give all information which [was in (his/her) power to give as **or** may have lead] to the identification of the driver of a vehicle to wit a [specify the vehicle] alleged to have been guilty of an offence under the said Act.'

Section 78 of the *Traffic Act* (Ch. 131) states:

- '(1) Any person who employs any other person to drive a motor vehicle shall keep a written record of the name, address and driving license number of such other person.
- (2) Such record shall be preserved for a period of six months after the date when such person ceases to be employed as a driver, and shall be made available to any police officer on demand.
- (3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence [...].'

OBLIGATIONS OF OWNERS

The wording of the charge for this offence is as follows:

'being the employer did fail to comply with the provisions of subsection (1) of section 78 of the *Traffic Act* (Ch. 131) in that (he/she) did fail to keep a written record of the name, address and driving license number of a person/s employed to drive a motor vehicle to wit a [specify the motor vehicle].'

Section 80 of the *Traffic Act* (Ch. 131) states:

'Any person who makes any statement which to his knowledge is false or in any respect misleading in connection with any information lawfully demanded or required under this Act shall be guilty of an offence [...].'

The wording of the charge for this offence is as follows:

'did make a statement which to (his/her) knowledge was [false **or** misleading] in connection with information lawfully [demanded **or** required] by [specify the title and name of this person] under section [specify the number] of the *Traffic Act* (Ch. 131).'

UNINSURED VEHICLE

Section 8 of the *Motor Vehicles (Third – Party Insurance) Act* (Ch. 83) states (in part):

- (1) Subject to the provisions of this Act, it shall not be lawfully for a person to use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person, or that other person, as the case may be, such a policy of insurance or such a security as complies with the requirements of this Act.
- (2) Any person who acts in contravention of this section shall be guilty of an offence [...].

The wording of the charge for this offence is as follows:

‘did [use **or** (cause **or** permit) a person namely (specify the name of this person) to use] a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] there not being in force in relation to the user of the said vehicle a policy of insurance or such a security as complies with the requirements of the *Motor Vehicles (Third-Party Insurance) Act* (Ch. 83).’

However, section 8(3) of the *Motor Vehicles (Third – Party Insurance) Act* (Ch. 83) states:

‘A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan, that he was using the vehicle in the course of his employment and that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance as is mentioned in subsection (1).’

THROWING OBJECTS

Section 58(1) of the *Traffic Act* (Ch. 131) states:

‘Any person who throws any object at any vehicle on a road or at any person in or on such vehicle, or who places any object on any road or by any means impedes the progress of any vehicle whereby injury or damage might be caused to such vehicle or to any other vehicle or to any person, shall be guilty of an offence [...].’

The wording of the charges for this offence are as follows:

‘did throw an object at a [vehicle to wit a (specify the vehicle) on a road namely (specify the name of the road) **or** person namely (specify the name of this person) (in **or** on) a vehicle to wit a (specify the vehicle) on a road namely (specify the name of the road)].’

‘did [place an object on a road namely (specify the name of the road) **or** impede the progress of a motor vehicle to wit a (specify the motor vehicle)] whereby injury or damage might have been caused to the said vehicle, another vehicle or to any person.’

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TRAFFIC ACT

VEHICLES TO BE LICENSED (Subject to section 8)	7
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- (1) did [use **or** permit to be used] a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] which was repairable at the public expense and which was not licensed under and in accordance with the provisions of Part II of the *Traffic Act* (Ch. 131) and the said [vehicle **or** trailer] was not exempted from the provisions of section 7 by or under the provisions of the *Traffic Act* (Ch. 131) or any regulations made thereunder.

Penalty: Liable to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

- (4) did [use **or** permit to be used] a motor vehicle to wit a [specify the motor vehicle] for which a licence fee had been paid as a motor vehicle of a class for which a higher licence fee is payable and had not been paid.

Penalty: Liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

IDENTIFICATION PLATES	12
------------------------------	-----------

did [use **or** permit to be used] a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] without having affixed thereto in the prescribed manner [the prescribed number of identification plates of the prescribed design and colour on which was inscribed the registration number of the vehicle **or** the dealer's general licence].

Penalty: Liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

LICENCE TO BE DISPLAYED ON VEHICLE	13(1)
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on a road namely [specify the name of the road] did [use **or** permit to be used] a vehicle to wit a [specify the vehicle] the licence to which was [illegible **and/or** defaced **and/or** displayed on the said vehicle not in the prescribed manner].

Penalty: Liable to a fine of two hundred dollars or to imprisonment for six months.

TRAFFIC ACT

DEALERS GENERAL LICENCE	16(2)
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being the holder of a dealer's general licence issued under section 16 of the *Traffic Act* (Ch. 131) did [contravene **or** fail to comply with] a [term **or** condition] to which (his/her) licence was subject to wit [describe the (term **or** condition) not complied with].

Penalty: Liable to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

DRIVERS TO BE LICENSED	20
-------------------------------	-----------

(1) did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] not being the holder of a valid driving licence or a provisional licence endorsed in respect of that class of vehicle.

(2) being [the owner of **or** in charge of a motor vehicle] to wit a [specify the motor vehicle] did [cause **or** permit] a person namely [specify the name of this person] to drive the said motor vehicle whilst the said person was not the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motor vehicle.

Penalty: Liable on first conviction to a fine of two hundred dollars or to imprisonment for six months, and on a second or subsequent conviction to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

PROVISIONAL DRIVING LICENCE	23(3)
------------------------------------	--------------

being the holder of a provisional licence did fail to comply with a [term or condition] as [endorsed thereon **or** prescribed in relation thereto] to wit [specify the (term **or** condition) not complied with].

Penalty: Liable to a fine of one hundred and fifty dollars or to imprisonment for two months or to both such fine and such imprisonment.

PRODUCTION OF DRIVING LICENCE	25
--------------------------------------	-----------

being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] did fail to carry (his/her) [driving licence **or** provisional licence] and on being so required by a police officer namely [specify the rank and name of police officer] did fail to produce the said license for examination.

Penalty: Liable to a fine of fifty dollars.

TRAFFIC ACT

APPLYING FOR OR OBTAINING LICENCE, OR DRIVING, WHILE DISQUALIFIED	35
--	-----------

(a) being disqualified for holding or obtaining a licence did [apply for **or** obtain a licence] while (he/she) was so disqualified.

(b) being disqualified for holding or obtaining a licence did drive on a road namely [specify the name of the road] a motor vehicle to wit [specify the motor vehicle].

being disqualified for holding or obtaining a licence of a particular [class **or** description] to wit [specify the (class **or** description)] did drive on a road namely [specify the name of the road] a motor vehicle of the said [class **or** description].

Penalty: Liable to imprisonment for twelve months, or, if the court thinks that having regard to the special circumstances of the case a fine would be adequate punishment for the offence, to a fine of five hundred dollars or to both such imprisonment and such fine.

ENDORSEMENT OF LICENSE	36
-------------------------------	-----------

(4) being the holder of a licence did fail to [post (his/her) license, cause (his/her) license to be delivered **or** produce (his/her) license] to a court to wit the [specify the type of court and its location] as required by a [court to wit (specify the type of court and its location) **or** police officer namely (specify the rank and name of the officer)] in accordance with section 36 of the *Traffic Act* (Ch. 131).

(6) whose license had been ordered to be endorsed with particulars of a disqualification order issued under the *Traffic Act* (Ch. 131) and who had not previously become entitled under subsection (7) of section 36 of the said Act to have the license issued to (him/her) free from the said particulars did [apply for **or** obtain] a license without giving the particulars of the order issued in respect of (his/her) license under the said Act.

Penalty: Liable to a fine of two hundred dollars and any license so ordered shall be of no effect.

TRAFFIC ACT

CAUSING DEATH BY RECKLESS OR DANGEROUS DRIVING	38
---	-----------

did cause the death of a person namely [specify the name of this person] by the driving of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] [recklessly **or** (at a speed **or** in a manner) which was dangerous to the public] having regard to all the circumstances of the case including the nature condition and use of the said road and the amount of traffic which was actually at the time or which might have been reasonably be expected to be on the said road by [specify the manner of driving].

Penalty: Liable to imprisonment for five years.

RECKLESS AND DANGEROUS DRIVING GENERALLY	39(1)
---	--------------

did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name the of road] [recklessly **or** (at a speed **or** in a manner) which was dangerous to the public] having regard to all the circumstances of the case including the nature condition and use of the said road and the amount of traffic which was actually at the time or which might have been reasonably be expected to be on the said road by [specify the manner of driving].

Penalty: Liable –

- (a) on conviction by the High Court, to a fine of one thousand dollars or to imprisonment for two years or to both such fine and such imprisonment;
- (b) on conviction by a Magistrate's Court, to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment, or in the case of a second or subsequent conviction to a fine of six hundred dollars or to imprisonment for twelve months or to both such fine and such imprisonment.

CARELESS AND INCONSIDERATE DRIVING	40(1)
---	--------------

did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] without [due care and attention **or** reasonable consideration for other persons using the road] by [specify the actions of the defendant/accused].

Penalty: Liable to a fine of five hundred dollars or to imprisonment for six months, and in the case of a second or subsequent conviction to a fine of seven hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

TRAFFIC ACT

SPEEDING	41(1)
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did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] at a speed of [specify the speed] greater than the speed prescribed by an order under section 68 or the speed prescribed for such vehicle or class of such vehicles in the regulations under section 82 of the *Traffic Act* (Ch. 131).

Penalty: Liable to a fine of five hundred dollars, or in the case of a second or subsequent conviction, to a fine of seven hundred dollars or to imprisonment for six months.

MINIMUM AGE FOR DRIVING	42(3)
--------------------------------	--------------

aged [specify the age of the defendant/accused] did [drive **or** (cause **or** permit) a person namely (specify the name of this person) to drive] a motor vehicle to wit a [specify the motor vehicle] in contravention of the provisions of section 42(3) of the *Traffic Act* (Ch. 131) relating to the minimum age for driving a motor vehicle.

Penalty: Liable to a fine of two hundred dollars, or in the case of a second or subsequent conviction to a fine of four hundred dollars or to imprisonment for six months.

DRIVING OR BEING IN CHARGE, WHEN UNDER THE INFLUENCE OF DRINK OR DRUGS	43(1)
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did [drive **or** attempt to drive] a motor vehicle to wit a [specify the motor vehicle] on a [road namely (specify the name of the road) **or** public place to wit (specify the public place)] whilst being unfit to drive through drink or drugs.

Penalty: Liable –

- (a) on conviction by the High Court, to a fine of two thousand dollars or to imprisonment for two years or to both such fine and such imprisonment;
- (b) on conviction by a Magistrate's Court, to a fine of four hundred dollars or to imprisonment for twelve months or in the case of a second or subsequent conviction to a fine of five hundred dollars or to imprisonment for twelve months.

TRAFFIC ACT

IMPROPER CONDITION OR OVERLOADING

46(1)

did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 44 of the *Traffic Act* (Ch. 131) because the said vehicle which was [laden **or** unladen] weighed [specify the weight of the vehicle] and that weight exceeded the maximum weight as provided for such vehicle as specified in Regulation 46 of the *Traffic Regulation* (Ch. 131) to wit [specify the maximum weight permitted].

did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 45 of the *Traffic Act* (Ch. 131) because the said vehicle weighed [specify the weight of the vehicle] and that weight exceeded the maximum weight:

- as specified by the manufacturer of the chassis of the said vehicle to wit [specify the maximum weight permitted];
- or
- as determined by an inspector under the *Traffic Act* (Ch. 131) to wit [specify the maximum weight permitted].

did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 44 of the *Traffic Act* (Ch. 131) because the said vehicle measured [specify the length in metres] in length and that length exceeded the maximum length as provided for such vehicle as specified in Regulation 46 of the *Traffic Regulation* (Ch. 131) to wit [specify the maximum length permitted].

did [(drive **or** use) **or** (cause **or** permit) to be used] on the road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] in contravention of the provisions of section 45 of the *Traffic Act* (Ch. 131) because the said vehicle was loaded in such a manner as to make it a danger to other persons using the said road.

Penalty: Liable to a fine of two hundred dollars, or to imprisonment for six months, or to both such fine and such imprisonment.

MOTOR RACING ON PUBLIC ROADS

47

did [promote **or** take part in] a [race **or** trial of speed] between motor vehicles [specify, if possible] on a road namely [specify the name of the road] which was not authorised by and conducted in accordance with the directions of the Commissioner of Police or other police officer deputed by that officer for that purpose.

Penalty: Liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

TRAFFIC ACT

CARRIAGE OF PERSONS ON MOTOR CYCLES
--

48(2)

being the driver of a two-wheeled motor cycle to wit a [specify the motor cycle] did have more than one person namely [specify the name of the additional pillion passenger] in addition to (him/her) on a road namely [specify the name of the road].

being the driver of a two-wheeled motor cycle to wit a [specify the motor cycle] did have a person namely [specify the name of this person] carried otherwise than sitting astride the cycle and on a proper seat securely fixed to the said cycle behind the driver's seat on a road namely [specify the name of the road].

Penalty: Liable to a fine of fifty dollars, or in the case of a second or subsequent conviction to a fine of one hundred dollars.

RECKLESS AND DANGEROUS CYCLING

49

did ride a [bicycle **or** tricycle] not being a motor vehicle on a road namely [specify the name of the road] [recklessly **or** (at a speed **or** in a manner) which was dangerous to the public] having regard to all the circumstances of the case including the nature condition and use of the said road and the amount of traffic which was actually at the time or which might have been reasonably be expected to be on the said road by [specify the manner of driving].

Penalty: Liable to a fine of one hundred dollars or to imprisonment for three months, or in the case of a second or subsequent conviction to a fine of one hundred and fifty dollars or to imprisonment for three months.

CARELESS AND INCONSIDERATE CYCLING

50

did ride a [bicycle **or** tricycle] not being a motor vehicle on a road namely [specify the name of the road] without [due care and attention **or** without reasonable consideration for other persons using the road] by [specify the riding of the (bicycle **or** tricycle)] on a road namely [specify the name of the road].

Penalty: Liable to a fine of fifty dollars or to imprisonment for two months, or in the case of a second or subsequent conviction to a fine of one hundred and fifty dollars or to imprisonment for three months.

TRAFFIC ACT

CYCLING WHEN UNDER THE INFLUENCE OF DRINK AND DRUGS	51(1)
--	--------------

did ride a [bicycle **or** tricycle] not being a motor vehicle on a [road namely (specify the name of the road) **or** public place to wit (specify the public place)] whilst being unfit to ride through drink or drugs.

Penalty: Liable to a fine of one hundred dollars or to imprisonment for three months, or in the case of a second or subsequent conviction to a fine of one hundred and fifty dollars or to imprisonment for three months.

CYCLE RACING ON ROADS	52
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did [promote **or** take part in] a [race **or** trial of speed] on a road namely [specify the name of the road] between [bicycles **or** tricycles] not being motor vehicles which was not authorised by and conducted in accordance with the directions of the Commissioner of Police or any police officer deputed by that officer for that purpose.

Penalty: Liable to a fine of fifty dollars.

DRIVERS TO COMPLY WITH TRAFFIC DIRECTIONS	53
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- (a) did whilst [driving **or** propelling] a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] did [neglect **or** refuse] to [stop the said vehicle **or** make it (proceed in **or** keep to) a particular line of traffic] when directed to do so by a police officer [specify the rank and name of the officer] who was in uniform engaged in the regulation of traffic and in the execution of his/her duty.

- (b) did whilst [driving **or** propelling] a vehicle to wit a [specify the vehicle] did fail to comply with the indication given by a traffic sign which had been lawfully placed on or near a road namely [specify the name of the road].

Penalty: Liable to a fine of two hundred dollars, or in the case of a second or subsequent conviction to a fine of three hundred dollars.

PEDESTRIANS TO COMPLY WITH DIRECTIONS TO STOP GIVEN BY POLICE OFFICERS REGULATING VEHICULAR TRAFFIC	54
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on foot did proceed [across **or** along] the carriageway of a road namely [specify the name of the road] in contravention of a direction to stop given by a police officer namely [specify the rank and name of the officer] in uniform engaged in the regulation of vehicular traffic in the execution of (his/her) duty.

Penalty: Liable to a fine of fifty dollars, or in the case of a second or subsequent conviction to a fine of one hundred dollars.

TRAFFIC ACT

LEAVING VEHICLES IN DANGEROUS POSITION

55

being in charge of a vehicle to wit a [specify the vehicle] did [cause **or** permit] the said vehicle to remain at rest on a road namely [specify the name of the road] in such a [position, condition **or** circumstance] as to be likely to cause danger to other persons using the said road.

Penalty: Liable to a fine of one hundred dollars, or in the case of a second or subsequent conviction to a fine of one hundred and fifty dollars or to imprisonment for three months.

OBSTRUCTING DRIVER OF MOTOR VEHICLE
--

56(4)

in a motor vehicle to wit a [specify the motor vehicle] did [molest **or** obstruct] the driver namely [specify the name of the driver] of the said motor vehicle whilst it was in motion.

being the [driver **or** person in charge] of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] did carry passengers in the said motor vehicle in such [numbers to wit (specify the number) **or** a position] as to be likely to interfere with the safe driving of the said motor vehicle.

did drive a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] in such a position that (he/she) could not [control the said motor vehicle **or** obtain a full view of the road and traffic ahead].

Penalty: Liable to a fine of one hundred dollars or to imprisonment for three months.

RIDING IN DANGEROUS POSITION

57(4)

[did ride **or** was carried] on the [footboard, tailboard, steps, mudguards, canopy, roofing **or** (describe elsewhere)] on the outside of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] not for the purpose of testing or repairing of said motor vehicle.

[did ride **or** was carried] on a load upon a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] which was unsafe by reason of the [insufficiency of space available for such person to stand or sit, position in which (he/she) was carried **or** (height **or** arrangement of the load)].

TRAFFIC ACT

[(did ride **or** was carried) **or** did (cause **or** permit) a person namely (specify the name of this person) (to ride **or** be carried)] upon a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] in circumstances in which the person [riding **or** carried] may have sustained injury by reason of the absence of such [railings, sides, tailboards **or** (describe other things)] as afford adequate means of hold or support.

Penalty: Liable to a fine of one hundred dollars or to imprisonment for three months.

THROWING OBJECTS AT OR IMPEDING PROGRESS OF VEHICLES ON ROADS	58(1)
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did throw an object at a [vehicle to wit a (specify the vehicle) on a road namely (specify the name of the road) **or** person namely (specify the name of this person) (in **or** on) a vehicle to wit a (specify the vehicle) on a road namely (specify the name of the road)].

did [place an object on a road namely (specify the name of the road) **or** impede the progress of a motor vehicle to wit a (specify the motor vehicle)] whereby injury or damage might have been caused to the said vehicle, another vehicle or to any person.

Penalty: Liable to a fine of two hundred dollars or to imprisonment for three months.

TAKING VEHICLES WITHOUT AUTHORITY	59(1)
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did take and drive away a vehicle to wit a [specify the vehicle] without having either the consent of the owner thereof namely [specify the name of the owner] or other lawful authority.

Penalty: Liable –

- (a) on conviction by the High Court, to a fine of five hundred dollars or to imprisonment for six months or to both such fine and such imprisonment;
- (b) on conviction by a Magistrate's Court, to a fine of two hundred dollars or to imprisonment for three months.

TRAFFIC ACT

OFFENCE TO TAMPER WITH MOTOR VEHICLES
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60(1)

did without lawful authority or reasonable cause tamper with [the brake **or** a part of the mechanism to wit (describe mechanism)] of a motor vehicle to wit a [specify the motor vehicle].

Penalty: Liable to a fine of one hundred dollars or in the case of a second or subsequent conviction to a fine of two hundred dollars or to imprisonment for three months.

HOLDING OR GETTING ON TO VEHICLE IN ORDER TO BE TOWED, OR CARRIED
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61

did without lawful authority or reasonable cause [take retain hold of **or** got on to] a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] whilst it was in motion on a road namely [specify the name of the road] for the purpose of being [drawn **or** carried].

Penalty: Liable to a fine of fifty dollars or in the case of a second or subsequent conviction to a fine of one hundred dollars.

CARELESSNESS WHILE IN CHARGE OF ANIMALS
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62

whilst [driving **or** conducting] [cattle, a dog **or** a (specify any other animal)] who on a road namely [specify the name of the road] did [fail to exercise reasonable care to keep (it **or** them) under proper control **or** allow the said animal to become a (danger **or** annoyance) to other persons using the said road].

Penalty: Liable to a fine of fifty dollars.

DUTY TO STOP AND REPORT

63

(1)(a) being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did stop but did fail to give (his/her) name and address and also the name and address of the owner and the identification marks of the said motor vehicle to a person namely [specify the name of this person] having reasonable grounds for so requiring.

TRAFFIC ACT

- (b) being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to stop although (he/she) had no reasonable cause to believe that the safety of (his/her) [person, passengers **or** vehicle] would be endangered by so stopping.

being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to stop and proceed forthwith to the nearest police station and there make a report of the accident and of (his/her) reasons for not stopping.

- (2)(a) being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although (he/she) did not for any reason give (his/her) name and address to a person namely [specify the name of this person] as required by section 63(1) of the *Traffic Act* (Ch. 131).

- (b) being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although [property to wit (specify the property) **or** another vehicle to wit a (specify the vehicle)] was damaged and the owner or person in charge of the said [vehicle **or** property] was not present.

- (c) being the driver of a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] involved in an accident whereby [injury **or** damage] was caused to [a person namely (specify the name of this person), a vehicle to wit a (specify the vehicle) **or** an animal (specify the animal)] did fail to report the accident at a police station or to a police officer as soon as reasonably possible although injury had been caused to a person namely [specify the name of this person].

- (3) being the owner of a motor vehicle to wit a [specify the motor vehicle] involved in an accident did refuse to supply a police officer namely [specify the rank and name of the officer] with all information necessary for the identification of the driver in the said accident.

TRAFFIC ACT

Penalty: Liable to a fine of two hundred dollars or to imprisonment for three months, or in the case of a second or subsequent conviction to a fine of three hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

INSPECTION OF VEHICLE INVOLVED IN AN ACCIDENT	64
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did [obstruct a police officer namely (specify the rank and name of the officer) in the (due exercise of [his/her] powers **or** performance of [his/her] duties) **or** fail to comply with an order issued by a police officer namely (specify the rank and name of the officer)] under section 64 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the defendant did (obstruct **or** fail to comply) in accordance with that section].

Penalty: Liable to a fine of three hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

CLOSURE OF ROADS	69(5)
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being the [driver **or** person in charge] of a vehicle to wit a [specify the vehicle] and trailer [if, applicable] which had a weight and axle/wheel loading of [specify the weight and wheel loading] did [(drive **or** haul) **or** cause it to be (driven **or** hauled)] over a bridge [on **or** near] which a conspicuous notice had been placed to effect that the said bridge was insufficient to carry traffic in excess of a specified [weight, axle **or** wheel] loading to wit [specify the weight and axle/wheel loading] unless [the gross weight and the (axle **or** wheel) loading of the said vehicle and any trailer attached thereto is less than the weight and loading specified or (he/she) had obtained the consent in writing of the highway authority or an authorised officer].

being the [driver **or** person in charge] of a vehicle to wit a [specify the vehicle] and trailer [if, applicable] did without receiving the permission in writing of the highway authority or an authorised officer [(drive **or** haul) **or** cause it to be (driven **or** hauled)] over a road namely [specify the name of the road] which was closed to traffic and where a conspicuous notice was displayed to the effect that the said road was closed.

Penalty: Liable to a fine of two hundred dollars, or in the case of a second or subsequent conviction to a fine of three hundred dollars.

TRAFFIC ACT

INSPECTION OF VEHICLES	71(3)
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did fail to comply with an [instruction **or** order] as issued by [a police officer namely (specify the rank and name of the police officer **or** an inspector appointed under section 4(3) of the *Traffic Act* (Ch. 131) namely (specify the name of the inspector))] on [specify the date] under section 71 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the defendant did fail to comply with the (instruction **or** order) issued in accordance with that section].

Penalty: Liable to a fine of one hundred dollars.

REMOVAL OF VEHICLES FROM ROAD	72
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(5) did [permit the use of **or** drive] a vehicle to wit a [specify the vehicle] in respect of which a [prohibition **or** restriction] was in force other than in conformity with [the condition/s **or** purpose] as specified in the [prohibition **or** restriction] to wit [specify the (condition/s **or** purpose)].

Penalty: Liable to a fine of eight hundred dollars or to imprisonment for twelve months, or to both such fine and such imprisonment.

(7) did fail to comply with an [instruction **or** order] given under section 72 of the *Traffic Act* (Ch. 131) given by [specify the name of this person].

Penalty: Liable to a fine of two hundred dollars

OWNER OR OTHER PERSON TO FURNISH INFORMATION AS TO IDENTITY OF DRIVER OF VEHICLE	77(2)
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being the owner of a vehicle the driver of which namely [specify the name of the driver] was alleged to be guilty of an offence under the *Traffic Act* (Ch. 131) did fail to comply with the requirements of paragraph (a) of section 77(1) of the said Act in that (he/she) did not give such information as to the identity of the said driver as required to give by a police officer namely [specify the rank and name of the officer].

did fail to comply with the requirement of paragraph (b) of section 77(1) of the *Traffic Act* (Ch. 131) in that (he/she) as required by a police officer [specify the rank and name of the officer] did not give all information which [was in (his/her) power to give as **or** may have lead] to the identification of the driver of a vehicle to wit a [specify the vehicle] alleged to have been guilty of an offence under the said Act.

Penalty: Liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

TRAFFIC ACT

OWNER TO KEEP LIST OF DRIVERS EMPLOYED

78(3)

being the employer did fail to comply with the provisions of subsection (1) of section 78 of the *Traffic Act* (Ch. 131) in that (he/she) did fail to keep a written record of the name, address and driving license number of a person/s employed to drive a motor vehicle to wit a [specify the motor vehicle].

Penalty: Liable to a fine of one hundred dollars.

GIVING FALSE INFORMATION

80

did make a statement which to (his/her) knowledge was [false **or** misleading] in connection with information lawfully [demanded **or** required] by [specify the title and name of this person] under section [specify the number] of the *Traffic Act* (Ch. 131).

Penalty: Liable to a fine of three hundred dollars or to imprisonment for six months, or to both such fine and such imprisonment, and if such statement is made to any person in connection with an application for any licence or permit the court convicting such person may also order that such licence or permit be not granted for a stated period.

FRAUDULENT IMITATION, etc., OF DOCUMENTS

81

did fraudulently [imitate, alter, mutilate, destroy, use **or** (lend **or** allow) to be used by another person namely (specify the name of this person)] a [licence, document, plate **or** mark] [issued **or** prescribed] under the *Traffic Act* (Ch. 131).

Penalty: Liable to a fine of six hundred dollars or to imprisonment for twelve months, or to both such fine and such imprisonment.

HIGHWAY AUTHORITIES' POWERS TO MAKE TRAFFIC ORDERS

83

did contravene an order made under section 83 of the *Traffic Act* (Ch. 131) in that (he/she) did [specify how the order was contravened].

Penalty: Liable to a fine of one hundred dollars.

TRAFFIC REGULATIONS

WHEELS AND TYRES OF MOTOR VEHICLES AND TRAILERS

23

did drive a [motor vehicle other than a road roller to wit a (specify the motor vehicle) or trailer] on a road namely [specify the name of the road] not fitted with wheels and adequately inflated pneumatic tyres or other type of wheel or tyre approved in writing by the highway authority.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

WHEELS AND TYRES OF OTHER VEHICLES

24

(1) on a road namely [specify the name of the road] did use a vehicle to wit a [specify the vehicle] not fitted with wheels and adequately inflated pneumatic tyres the laden weight of which exceeded 1,000 lb. without approval in writing being granted by the highway authority to be used on the said road.

(2) on a road namely [specify the name of the road] did use a vehicle to wit a [specify the vehicle] fitted with wheels without pneumatic tyres that had a [wheel or tyre] fitted to the said vehicle so defective that it did not bear evenly on a level surface when the said vehicle was moving thereon.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

WHEELS AND TYRES TO BE ADEQUATE

25

on a road namely [specify the name of the road] did use a vehicle to wit a [specify the vehicle] not equipped with [tyres and/or wheels] as are adequate to carry safely the permitted maximum laden weight of the said vehicle.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

TRAFFIC REGULATIONS

SUSPENSION

26

on a road namely [specify the name of the road] did use a vehicle other than a tractor or motor cycle to wit a [specify the vehicle] not equipped with suitable and sufficient springs or other suspension between each wheel and the frame of the vehicle.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

BRAKES ON MOTOR VEHICLES

27

- (1) did use a motor vehicle to wit a [specify the motor vehicle] not equipped with two entirely independent and efficient braking systems or with one efficient braking system having two independent means of operation in either case so designed and constructed that the failure of any single portion of any braking system would prevent the brakes on [two wheels **or** one wheel as the said vehicle had less than four wheels] from operating effectively so as to bring the said vehicle to rest within the distance and under the conditions specified in paragraph (9) of Regulation 27 of the *Traffic Regulations* (Ch. 131) on a road namely [specify the name of the road].

- (2) did use a motor vehicle having more than three wheels to wit a [specify the motor vehicle] not equipped with two independent braking systems which were both designed and constructed that if the brakes thereof act either directly or indirectly on two wheels each braking system acted on two wheels on the same axle on a road namely [specify the name of the road].

- (4)(a) did use a trailer having a permissible laden weight exceeding [one ton **or** one-half of the unladen weight of the drawing vehicle] not equipped with at least one braking device capable acting symmetrically on at least half the number of wheels on each side of the trailer and preventing the rotation of the wheels when the trailer is uncoupled and automatically stopping the trailer if the trailer becomes detached whilst in motion on a road namely [specify the name of the road].

- (b) did use a trailer whose permissible laden weight does not exceed one ton not [fitted with a device capable of automatically stopping the trailer if the trailer becomes detached whilst in motion **and/or** equipped in addition to the main towing attachment with a secondary attachment in the form of a chain or wire rope of adequate strength] on a road namely [specify the name of the road].

TRAFFIC REGULATIONS

- (6) did use a motor vehicle to wit a [specify the motor vehicle] and [one or (specify the number, more than one)] trailers not equipped with brakes capable of controlling the movement of and of stopping the combination in an efficient safe and rapid way under any conditions of loading on any up or down gradient on which it was operated on a road namely [specify the name of the road].
- (7) did use a motor vehicle other than a motor cycle with or without a sidecar attached to wit a [specify the motor vehicle] not equipped with a braking system so designed and constructed that it could be set so as effectively to prevent [at least two of the wheels or one of the wheels as the said vehicle had only three wheels] from revolving when the said vehicle was unattended on a road namely [specify the name of the road].
- (8) did use a vehicle to wit a [specify the vehicle] not equipped with a brake or brakes capable of bringing it to rest within a reasonable distance other than as provided for in Regulation 27 of the *Traffic Regulations* (Ch. 131) on a road namely [specify the name of the road].

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

[Note that Regulation 27(3)(b) is currently suspended]

LIGHTS ON MOTOR VEHICLES AND TRAILERS

28

- (1) did use a motor vehicle to wit a [specify the motor vehicle] not equipped with two lamps at the front of the vehicle with one on each side on a road namely [specify the name of the road].
- did use a motor vehicle to wit a [specify the motor vehicle] in motion at night with the two lamps at the front of the said vehicle not lighted on a road namely [specify the name of the road].
- did use a motor vehicle to wit a [specify the motor vehicle] in motion at night with the two lamps at the front of the said vehicle lighted and the rays from the said lamps were not white or yellow on a road namely [specify the name of the road].
- did on a road namely [specify the name of the road] use a motor vehicle to wit a [specify the motor vehicle] which is capable of proceeding at a speed greater than 20 miles per hour in motion at night with the two lamps at the front of the said vehicle lighted and the rays from the said lamps were not of such intensity as to illuminate the said road ahead for a distance of at least 110 yards.

TRAFFIC REGULATIONS

[Note that Regulation 28(1) is suspended in respect of its application to tractors, unless such vehicles are used on a road at night.]

(2) did have at night a [motor vehicle to wit a (specify the motor vehicle) **or** a trailer not attached to a motor vehicle] stationary on a road namely [specify the name of the road] other than in a car park or in a place reserved for parking in a street where adequate lighting is normally provided which did not show two lights in front one at each side of sufficient intensity to indicate the presence of the [motor vehicle **or** trailer] from a distance of 500 feet to approaching traffic.

(3) did use a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] at night which did not carry one lamp showing to the rear a red light of such intensity as to indicate clearly within a reasonable distance its presence on the said road to traffic approaching from behind.

did use a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] at night which did not carry one lamp so constructed as to show an uncoloured light of sufficient intensity to illuminate clearly the figures and numbers on the rear identification plate where no other means of so illuminating such plate was otherwise provided.

(5) did use a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] equipped with more than one swivelling light.

(6)(a) did use a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] with a [spot-light **or** swivelling light] in place of a headlight although the said vehicle was not completing a journey where the headlight had been damaged.

(b) did use a [motor vehicle to wit a (specify the motor vehicle) **or** trailer] on a road namely [specify the name of the road] with a [spot-light **or** swivelling light] in such a manner as to [impede the vision of **or** cause annoyance to] any user of the said road.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

TRAFFIC REGULATIONS

LIGHTS ON VEHICLES OTHER THAN MOTOR VEHICLES AND TRAILERS

29

- (a) did use a vehicle other than a motor vehicle or trailer to wit a [specify the vehicle] on a road namely [specify the name of the road] not fitted with two lamps showing a white light so fixed and lighted as to indicate clearly to approaching traffic from a distance of 500 feet the presence and width of the said vehicle and of any load carried thereon.
- (b) did use a vehicle other than a motor vehicle or trailer to wit a [specify the vehicle] on a road namely [specify the name of the road] not fitted with one lamp to the rear so as to indicate clearly its presence on the said road to traffic approaching from behind.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

REFLECTORS

30

- (1)(a) did use a [goods vehicle to wit a (specify the goods vehicle) **or** a trailer] on a road namely [specify the name of the road] not fixed with two red reflectors on the back thereof with one reflector within 12 inches of the nearside and the other within 12 inches of the offside of the said [vehicle **or** trailer] and all at a height not exceeding 6 feet nor less than 2 feet 6 inches from the ground.
- (b) did use at night a private motor car to wit a [specify the motor car] on a road namely [specify the name of the road] not fitted with one red reflector on the back thereof at a height not exceeding 6 feet nor less than 18 inches from the ground and on the offside thereof.
- (2) did use a [goods vehicle to wit a (specify the goods vehicle) **or** a trailer] on a road namely [specify the name of the road] although fixed with two red reflectors on the back thereof the said reflectors did not have an [effective reflecting area of not less than 9 square inches **or** unbroken reflecting surface circular in shape with a diameter of not less than 3 inches].
- did use a private motor car to wit a [specify the motor car] on a road namely [specify the name of the road] although fixed with two red reflectors on the back thereof the said reflectors did not have an [effective reflecting area of not less than 9 square inches **or** unbroken reflecting surface circular in shape with a diameter of not less than 1 $\frac{1}{2}$ inches].

TRAFFIC REGULATIONS

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

SILENCERS

31

did drive a motor vehicle to wit a [specify the motor vehicle] propelled by [an internal combustion engine **or** a compression ignition engine] that was not so constructed that the exhaust gases from the engine cannot escape into the atmosphere without first passing through a silencer, expansion chamber or other contrivance suitable and sufficient for reducing as far as may be reasonable the noise which would otherwise be caused by the escape of such gases.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

REVERSIBILITY

32

did drive a motor vehicle to wit a [specify the motor vehicle] whose unladen weight exceeds 8 cwt. not so constructed and maintained as to be capable of travelling either forwards or backwards.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

REFLECTING MIRROR

33

(1) did drive on a road namely [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] that was not equipped with a reflecting mirror so constructed and fitted as to enable the driver to be or become aware of the presence in the rear of any other vehicle.

TRAFFIC REGULATIONS

- (2) did drive on a road namely [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with its reflecting mirror/s so obstructed by a [part of the said vehicle, person namely (specify the name of this person) **or** thing to wit (specify the thing)] [therein **or** thereupon] that the said driver was not able to become aware of the presence in the rear of any other vehicle by means of such mirror/s.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

DRIVER TO HAVE UNINTERRUPTED VIEW AHEAD	34
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- (1) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with a windscreen not so [designed, constructed **and/or** used] that the said driver controlling it had a full view of the road and traffic ahead.
- (2) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with [a mascot **or** an object to wit a (specify the object)] carried [in **or** on] the said motor vehicle in a position in which it was likely to impede the driver's view of the road and traffic ahead of the said motor vehicle.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

MASCOTS LIKELY TO INJURE PEDESTRIANS	35
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did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with [a mascot **or** an object to wit a (specify the object)] carried [in **or** on] the said motor vehicle in a position where it was likely to strike a person namely [specify the name of this person] with whom the vehicle may have collided and caused injury to the said person by reason of the projection thereon of the said [mascot **or** object].

TRAFFIC REGULATIONS

General Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment. [Regulation 49]

VEHICLES STEERED FROM NEAR SIDE

36

(1) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] which was steered from the near side but did not have painted on the rear near side a white arrow pointing to the near side which was not less than one foot long and two inches broad and clearly visible to traffic approaching from behind.

(2) did drive on a road to wit [specify the name of the road] a motor vehicle other than a goods vehicle to wit a [specify the motor vehicle] which was steered from the near side but not equipped with direction indicators of a type mentioned in Regulation 37 of the *Traffic Regulations* (Ch. 131) and fitted at the rear with a red light which lights when the brakes are applied.

did drive on a road to wit [specify the name of the road] a motor vehicle other than a goods vehicle to wit a [specify the motor vehicle] which was not fitted at the rear with a red light which lights when the brakes are applied.

(3) did drive on a road to wit [specify the name of the road] a goods vehicle to wit a [specify the goods vehicle] registered in Solomon Islands which was steered from the near side but not equipped with mechanical direction indicators capable of being worked by hand by the driver.

did drive on a road to wit [specify the name of the road] a goods vehicle to wit a [specify the goods vehicle] registered in Solomon Islands which was steered from the near side but not fitted at the rear with a red light which lights when the brakes are applied.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

DIRECTION INDICATORS (Subject to regulation 36)

37

(1) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] not equipped with direction indicators which were one of the types as specified in Regulation 37 of the *Traffic Regulations* (Ch. 131).

TRAFFIC REGULATIONS

- (2) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] and did use a direction indicator other than to indicate that the said vehicle was about to turn right or left.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

REVERSING LIGHTS	38
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did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] not equipped with [reversing lights **or** a reversing light] the colour of the said [lights **or** light] being white or orange/amber.

did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with [reversing lights **or** a reversing light] operating although the said vehicle was not reversing or about to reverse.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

SAFETY GLASS	39
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did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] which did not have all the glass fitted to the said motor vehicle maintained in such a condition that the vision of the said driver was not obscured while the said vehicle was being driven.

did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] which did not have only safety glass fitted to the said motor vehicle so constructed or treated that in the event of an accident or if fractured it does not fly into fragments and is less likely to cause severe cuts or physical injury than ordinary glass.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

TRAFFIC REGULATIONS

WARNING INSTRUMENTS

40

- (1) did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] not fitted with an instrument capable of giving audible and sufficient warning of its approach or position.
- (2) did [use **or** permit to be used] when a motor vehicle to wit [specify the motor vehicle] was stationary [on a road to wit (specify the name of the road) **or** in a parking place at (specify the location of the parking place)] a warning instrument when such use was not necessary on grounds of safety.

did [use **or** permit to be used] when a motor vehicle to wit [specify the motor vehicle] was stationary [on a road to wit (specify the name of the road) **or** in a parking place at (specify the location of the parking place)] a warning instrument in such a manner as to be a nuisance to the public.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

WINGS

41

did drive on a road to wit [specify the name of the road] a motor vehicle other than a motor tractor or a specialist vehicle to wit a [specify the motor vehicle] not fitted with wings or mudguards or other similar fittings at the front and rear of the vehicle to catch and deflect downwards any stones, mud, water or any other substance thrown up by the rotation of the wheels.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

TRAILER COUPLINGS

42

did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] which a trailer was attached the couplings to which were not [efficient for the purpose **and/or** maintained in a safe condition].

TRAFFIC REGULATIONS

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

SPEEDOMETER

43(3)

did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] not fitted with a speedometer for recording the speed of the said vehicle with reasonable accuracy.

did drive on a road to wit [specify the name of the road] a motor vehicle to wit a [specify the motor vehicle] with a speedometer not [fitted in such a manner as to be visible to the driver at all times **and/or** maintained in good working order].

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

WINDSCREEN WIPER

44(1)

did drive on a road to wit [specify the name of the road] a motor vehicle other than a motor cycle to wit a [specify the motor vehicle] fitted with a windscreen but not equipped with an efficient mechanically operated windscreen wiper to prevent interference by weather conditions with the vision of the driver.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

ADDITIONAL MARKING ON TRAILERS AND TOWED VEHICLES FOURTH SCHEDULE

45

being the owner of a [trailer **or** towed vehicle other than a vehicle which required to be towed on account of a breakdown] which did not have affixed in a conspicuous position on the rear thereof the letter "T" in the form in the diagram contained in the Fourth Schedule of the *Traffic Regulations* (Ch. 131).

TRAFFIC REGULATIONS

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

WEIGHTS AND DIMENSIONS OF VEHICLES (Subject to the provisions of section 45 of the Act)	46
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- (a) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the maximum weight of the said vehicle [laden **or** unladen] which exceeded 68,000 lb.
- (b)(i) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the maximum weight of the said vehicle [laden **or** unladen] which exceeded 7,000 lb on its most heavily loaded wheel.
- (ii) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the maximum weight of the said vehicle [laden **or** unladen] which exceeded 17,000 lb on its most heavily loaded axle.
- (iii) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the maximum weight of the said vehicle [laden **or** unladen] which exceeded 32,000 lb on its most heavily loaded tandem axle group that is to say a group whereof the two axles are not less than 40 nor more than 84 inches apart.
- (c) did use on a road namely [specify the name of the road] a vehicle other than a motor cycle or trailer to wit a [specify the vehicle] which had more than three-quarters of its laden weight being transmitted to the road surface by any two wheels of the said vehicle.
- (e)(i) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the overall width of the said vehicle including the total distance by which the load projected beyond the overall width of the said vehicle which exceeded 8 feet 3 inches.
- (ii) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the distance by which the load carried on the said vehicle projected beyond the overall width thereof which exceeded 6 inches on either side.
- (f)(i) did use on a road namely [specify the name of the road] a goods vehicle with two axles to wit a (specify the goods vehicle) the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 33 feet.

TRAFFIC REGULATIONS

- (ii) did use on a road namely [specify the name of the road] a passenger vehicle with two axles to wit a (specify the passengers vehicle) the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 36 feet.

- (iii) did use on a road namely [specify the name of the road] a vehicle with three or more axles to wit a [specify the vehicle] the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 36 feet.

- (iv) did use on a road namely [specify the name of the road] an articulated vehicle with two axles to wit a [specify the articulated vehicle] the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 46 feet.

- (v) did use on a road namely [specify the name of the road] a combination of vehicle and one trailer to wit a [specify the vehicles] the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 59 feet.

- (vi) did use on a road namely [specify the name of the road] combination of vehicle and two trailers to wit a [specify the vehicles] the maximum overall length of the vehicle or combination of vehicles [laden **or** unladen] including [tow ropes **or** drawing bars] which exceeded 72 feet.

- (g) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] which had an overhang which exceeded 50 per cent of the wheelbase of the said vehicle.

- (h)(i) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] which had the overhang of the load which it carried projected beyond the overall length of the said vehicle by more than 6 feet.

- (ii) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] which had a load that projected beyond the overall length of the said vehicle by more than 2 feet the rear extremity of the load and which was not plainly indicated by a [conspicuous red marker during the day **or** red light at night].

- (iii) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] with the whole load that was carried on the said vehicle not at all times clear of the road surface.

- (i) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] the overall height of the said vehicle [laden **or** unladen] exceeded 12 feet 6 inches from the road surface.

TRAFFIC REGULATIONS

- (j) did use on a road namely [specify the name of the road] a [rope, bar **or** device] used for towing a [trailer **or** towed vehicle] which exceeded 15 feet in length.

did use on a road namely [specify the name of the road] a [rope, bar **or** device] used for towing a [trailer **or** towed vehicle] and the presence of the said [rope, bar **or** device] was not made easily distinguishable to other users of the said road.

- (k) did use on a road namely [specify the name of the road] a vehicle to wit a [specify the vehicle] which was towing more than two [trailers **or** towed vehicles] to wit [specify the number].

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

CARRIAGE OF PASSENGERS ON MOTOR TRACTORS, BULLDOZERS, GRADERS AND OTHER VEHICLES NOT CONSTRUCTED OR ADAPTED TO CARRY PASSENGERS	48
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did on a road namely [specify the name of the road] carry passengers on a [motor tractor, bulldozer, grader, crane, road roller **or** vehicle to wit a (specify the other type of vehicle)] not designed, constructed or adapted to carry passengers.

Penalty: Liable, in the case of a first conviction, to a fine of eighty dollars or imprisonment for two months or to both fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of one hundred dollars or imprisonment for three months or to both such fine and such imprisonment, see regulation 49.

DRIVER'S SEAT IN GOODS VEHICLES	60
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- (1) did drive a goods vehicle [specify the goods vehicle] on a road namely [specify the name of the road] which did not provide for the exclusive use of the driver a single seat or a section of continuous seat the front edge of which was not less than 18 inches in length and placed and constructed so that the driver was able to control the said vehicle effectively and with safety.

- (2) did carry [a person namely (specify the name of this person) **or** goods] in such a [position **or** manner] [as to occupy part of the driver's seat **or** so as to obstruct (his/her) (movements **or** view)] when (he/she) was driving the said vehicle on a road namely [specify the name of the road].

TRAFFIC REGULATIONS

- (3) did carry [a person namely (specify the name of the road) **or** goods] [on the right or offside of the driver of a right-hand drive vehicle **or** to the left or nearside of the driver of a left-hand drive vehicle] whilst driving a vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road].

Penalty: Liable to a fine of eighty dollars or imprisonment for two months or to both such fine and such imprisonment, see regulation 62.

CARRIAGE OF PASSENGERS ON GOODS VEHICLES	61(1)
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did on a road namely [specify the name of the road] without the prior written authorisation of a licensing officer did [cause **or** permit] a greater number of passengers to be carried on a goods vehicle to wit a [specify the goods vehicle] than the number which the said vehicle was authorised to carry under the terms of its licence.

Penalty: Liable to a fine of eighty dollars or imprisonment for two months or to both such fine and such imprisonment, see regulation 62.

PASSENGER LIMIT - BICYCLE	64(2)
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being the rider of a pedal cycle which had not been especially constructed or adapted for the carriage of more than one person did on a road namely [specify the name of the road] carry a person namely [specify the name of this person].

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

FRONT LIGHT - BICYCLE	65
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did ride a pedal cycle on a road namely [specify the name of the road] at night whilst not having attached at the front thereof a lamp throwing in a forward direction a light substantially white in colour of sufficient brilliance to be visible under normal atmospheric conditions for a distance of at least 100 feet.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

TRAFFIC REGULATIONS

REAR LIGHT OR REFLECTOR - BICYCLE

66

- (a) did ride a pedal cycle on a road namely [specify the name of the road] at night not equipped with a lamp placed at the back of the pedal cycle so as to display to the rear a red light of sufficient brilliance to be visible under normal atmospheric conditions for a distance of 100 feet.
- (b) did ride a pedal cycle on a road namely [specify the name of the road] at night not equipped with a red reflector at the back of the pedal cycle so as to reflect to the rear a light shining towards it from rearward of the pedal cycle.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

BRAKE - BICYCLE

67

did ride a pedal cycle on a road namely [specify the name of the road] not equipped with at least one efficient brake attached thereto and operating on the rear wheel.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

BELL - BICYCLE

68

did ride a pedal cycle on a road namely [specify the name of the road] not equipped with a bell as a warning device attached thereto and capable of being readily operated and clearly audible under normal conditions at a distance of not less than 50 feet.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

TOWING - BICYCLE

69

did tow a pedal cycle by a vehicle to wit a [specify the vehicle] in motion on a road namely [specify the name of the road].

TRAFFIC REGULATIONS

did ride a pedal cycle whilst being towed by another vehicle to wit a [specify the vehicle] in motion on a road namely [specify the name of the road].

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

OBSERVANCE OF TRAFFIC SIGNS - BICYCLE	70
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did ride a pedal cycle on a road namely [specify the name of the road] and did not conform to the indication given by a traffic sign in that (he/she) did not [specify how the defendant failed to comply with the traffic sign].

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

SINGLE FILE - BICYCLE	71
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(1) whilst riding a pedal cycle did not proceed along a road namely [specify the name of the road] in single file.

(2) whilst riding a pedal cycle on a road namely [specify the name of the road] abreast of and on the off-side of another person namely [specify the name of this person] riding a pedal cycle on the said road not for the purpose of overtaking the said person.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

MANNER OF RIDING - BICYCLE	72
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(a) did ride a pedal cycle on a road namely [specify the name of the road] in a manner other than astride the saddle.

(b) did ride a pedal cycle on a road namely [specify the name of the road] with no hands holding the handlebar to steer and control the pedal cycle.

TRAFFIC REGULATIONS

- (c) did ride a pedal cycle on a road namely [specify the name of the road] that was loaded in such a manner as to make it a danger to other persons using the said road.

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment, see regulation 73.

[Note that this Regulation only applies to Auki, Gizo, Honiara and Tulaghi by virtue of Regulation 63.]

DISPLAY OF TAXI SIGN WITHOUT LICENSE PROHIBITED	78
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The wording of the charge for this offence is as follows:

‘did [display **or** (cause **or** permit) to be displayed] upon a vehicle to wit a [specify the vehicle] that was not licensed as a taxi [the word “taxi” **or** a (sign **or** device) representing the said vehicle to be a taxi].’

Penalty: Liable to a fine of eighty dollars or to imprisonment for two months or to both such fine and such imprisonment.

TAXI TO BE INSPECTED QUARTERLY	79
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The wording of the charge for this offence is as follows:

‘did fail to produce to a licensing officer a current certificate signed by an inspector and certifying that he/she has inspected a taxi to wit a [specify the vehicle] and that in his/her opinion the said vehicle meets the requirements of the *Traffic Act* (Ch. 131).’

Penalty: Liable to a fine of ten dollars or to imprisonment for one month or to both such fine and such imprisonment.

DRIVING A PUBLIC SERVICE VEHICLE WITHOUT PASSENGER INSURANCE	80
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did [drive **or** (cause **or** permit) another person namely (specify the name of this person) to drive] a public service vehicle to wit a [specify the vehicle] on a road namely [specify the name of the road] there not being in force in relation to the said public service vehicle a policy of insurance which indemnifies the owner of the said public service vehicle and any other person who at any time drives the said public service vehicle whether with or without the authority of the owner jointly and each of them severally against all liability incurred by the owner and that person jointly or by either of them severally in respect of the death of or bodily injury to a passenger while carried on or while entering or alighting from the said public service vehicle.

TRAFFIC REGULATIONS

Penalty: Liable –

- (a) in the case of a first conviction, to a fine of eighty dollars or to imprisonment for two months, or to both such fine and such imprisonment;
- (b) in the case of a second or subsequent conviction, to a fine of one hundred dollars or to imprisonment for three months, or to both such fine and such imprisonment.

TRAFFIC (MOTOR CYCLISTS' HEADGEAR) REGULATIONS

WEARING OF PROTECTIVE HEADGEAR

3(1)

whilst not wearing protective headgear did [drive **or** ride] on a road namely [specify the name of the road] a motor cycle to wit [specify the motor cycle] otherwise than in a sidecar which was not at the time being propelled by a person on foot.

Penalty: Liable on first conviction to a fine of twenty dollars and on second or subsequent conviction to a fine of fifty dollars.

FAIL TO COMPLY WITH DIRECTION

4(2)

did fail to comply with a direction of a police officer namely [specify the rank and name of the officer] given under paragraph (1) of Regulation 4 of the *Traffic (Motor Cyclists' Headgear) Regulations* (Ch. 131) to stop dismount and refrain from [driving **or** riding] upon a motor cycle to wit a [specify the motor cycle] until the breach detected was remedied.

Penalty: Liable to a fine of ten dollars.

MOTOR VEHICLES (THIRD-PARTY INSURANCE) ACT

MOTOR VEHICLES TO BE INSURED OR SECURED AGAINST THIRD-PARTY RISKS
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8(1)

did [use **or** (cause **or** permit) a person namely (specify the name of this person) to use] a motor vehicle to wit a [specify the motor vehicle] on a road namely [specify the name of the road] there not being in force in relation to the user of the said vehicle a policy of insurance or such a security as complies with the requirements of the *Motor Vehicles (Third-Party Insurance) Act* (Ch. 83).

Penalty: Liable –

- (a) on conviction by the High Court, to a fine of eight hundred dollars or to imprisonment for two years or to both such fine and such imprisonment;
- (b) on conviction by a Magistrate's Court, to a fine of one hundred and fifty dollars or to imprisonment for four months or to both such fine and such imprisonment.